

SUPREME COURT, U. S.

## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~313~~ 15

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WESTERN UNION TELEGRAPH COMPANY,  
APPELLANT,

vs.

PENNSYLVANIA, BY SIDNEY GOTTLIEB,  
ESCHEATOR.

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APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF  
PENNSYLVANIA, MIDDLE DISTRICT

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# SUPREME COURT OF THE UNITED STATES

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No. 543

WESTERN UNION TELEGRAPH COMPANY,  
APPELLANT,

*vs.*

PENNSYLVANIA, BY SIDNEY GOTTLIEB,  
ESCHEATOR.

APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF  
PENNSYLVANIA, MIDDLE DISTRICT

## INDEX

	Original	Print
Record from the Court of Common Pleas of Dauphin County, Pennsylvania		
Petition for escheat .....	3	1
Answer .....	8	4
Petition for order fixing time and place of hearing and directing service of notice by post- ing and publication .....	17	10
Order fixing time and place of hearing and directing posting and publication of notice thereof .....	19	11
Stipulation of facts .....	22	13
Opinion by the court, December 15, 1958 .....	51	32
Decree, Neely, J. ....	75	47
Defendant's exceptions .....	76	48
Opinion by the court, July 6, 1959 .....	80	51
Final decree, Neely, J. ....	88	56



Record from the Court of Common Pleas of  
Dauphin County, Pennsylvania—Continued

EXHIBITS:

A—Record of Unpaid Money Orders to December 31, 1946 (first 2 pages) .....	89	57
—Record of Unpaid money orders for the year 1946, originating in Pennsylvania and destined to New York (pages 97-98) .....	89a	59
D-1—Excerpt, Book of Rules of December 1, 1916 .....	91	61
D-2—Excerpt, Book of Rules of October 1, 1918 .....	92	61
D-3—Excerpt, Book of Rules of February 1, 1920 .....	92	62
D-4—Excerpt, Book of Rules of February 1, 1923 .....	93	62
D-5—Excerpt, Book of Rules of February 1, 1926 .....	95	63
D-6—Excerpt, Book of Rules of April, 1934 ..	96	64
D-7—Excerpt, FCC Tariff of January 23, 1939 ..	97	64
D-3—Sample Money Transfer Applications .....	99	65
—Money transfer drafts .....	103	66
D-4—Money transfer drafts .....	105	67
D-5—Money transfer application form .....	109	69
—Sender's receipt .....	111	70
—Notice to payee of caution transfer .....	113	71
—Money transfer draft .....	115	72
—Refund draft .....	117	73
—Money transfer draft .....	119	74
D-6—Money order application form .....	121	75
—Sender's receipt .....	123	76
—Money order draft .....	125	77
—Notice to payee of a "Caution" Order ..	127	78
D-8—Sender's receipt .....	135	79
—Money order draft .....	137	80
—Money order draft .....	141	81
—Refund draft .....	143	82
D-5—Refund notice .....	144a	83

	Original	Print
Record from the Court of Common <sup>1</sup> Pleas of Dauphin County, Pennsylvania—Continued		
EXHIBITS:—Continued		
D-6—Notice to sender of undelivered money order .....	144b	84
D-10 and 11—Reverse side of application forms 72A and 72B .....	144d	85
D-12 and 13—Reverse side of application forms 72E and 72F .....	144e	86
D-14—Reverse side of application form 72H .....	144f	87
Proceedings in the Supreme Court of the Commonwealth of Pennsylvania, Middle District .....	153	88
Opinion, Musmanno, J. ....	153	88
Notice of appeal .....	161	97
Record of Unpaid money orders for the year 1946, originating in Pennsylvania and destined to New York (pages 97-98) (copy) (omitted in printing) .....	166	101
Triple certificate (omitted in printing) .....	170	102
Order noting probable jurisdiction .....	171	102

[fol. 3]

**IN THE COURT OF COMMON PLEAS OF  
DAUPHIN COUNTY, PENNSYLVANIA**

No. 236—CD 1953

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COMMONWEALTH OF PENNSYLVANIA  
By Sidney Gottlieb, Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY.

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[fol. 4]

PETITION FOR ESCHEAT—Filed December 21, 1953

*To the Honorable the Judges of the said Court:*

The petition of Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania, brings this action under the provisions of the Act approved May 2, 1889, P. L. 66, and the amendment thereto, and says:

1. He was appointed Escheator of the Commonwealth of Pennsylvania, by Commission issued by the Secretary of Revenue of the Commonwealth of Pennsylvania.

2. The defendant, The Western Union Telegraph Company, is a corporation organized and existing under the [fol. 5] laws of the State of New York, with its principal place of business located at No. 60 Hudson Street, New York, New York. The defendant is authorized to do business in the State of Pennsylvania.

3. In the conduct of its business, the defendant has for many years maintained offices and places of business in Pennsylvania.

4. As part of its business the defendant carries on a telegraphic money order service for the transmission of money from person to person and from place to place.

5. In the conduct of its business, the defendant has from time to time, at its offices and places of business in Pennsylvania, received various sums of money from divers persons for transmission to other persons.

6. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys for transmittal, it sent its order, called by it a "money order", to its office or place of business at the place of destination designated by the sender, and by such money order directed the latter office of place of business, which it called its "paying office", to make payment to the payee named by the sender.

7. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys [fol. 6] for transmittal to places of destination other than United States immigration offices, U. S. Naval vessels or Mexico, it agreed with the sender that if payment could not be effected within 72 hours, Sundays and holidays excluded, after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

8. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys destined to U. S. Immigration stations and U. S. Naval vessels, it agreed with the sender that if payment could not be effected within 5 days after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

9. In each instance in which the defendant, at its offices and places of business in Pennsylvania, received moneys destined to Mexico, it agreed with the sender that if payment could not be effected within 10 days after receipt of its money order at its paying office, refund of the moneys received by it would be made by it to the sender.

10. In many instances in which the defendant, at its offices and places of business in Pennsylvania, received moneys from divers persons for transmittal to other persons, and sent its money order to its paying office at the

place of destination designated by the sender, payment [fol. 7] could not be effected within the time specified in the money order.

11. In many of the instances set forth in paragraph 10 above, payment has not been thereafter effected and refund of the moneys has not been made by the defendant to the sender.

12. In many instances in which payment could not be effected nor refund made, as above set forth, more than seven years have elapsed from the time the sender was first entitled to refund of the said moneys received by the defendant.

13. In each such instance in which the defendant, at its offices and places of business in Pennsylvania, received such moneys for transmittal, and has neither effected payment nor made refund for more than seven years since the sender was first entitled to such refund, the whereabouts of the sender have been unknown to the defendant for more than seven years and the said moneys have been unclaimed for more than seven years.

14. In each such instance, the defendant has at all times been ready, willing and able to refund such moneys to the sender, but has been unable to do so because the whereabouts of the sender have been unknown to the defendant to the present time and the said moneys have been unclaimed to the present time.

[fol. 8] 15. In each such instance, the said moneys have escheated to the Commonwealth under the laws of the Commonwealth of Pennsylvania.

Wherefore your petitioner prays that your Honorable Court hear and determine whether an escheat of the said property has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth of Pennsylvania.

And your petitioner will ever pray, etc.

Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania.

[Note: Affidavit omitted]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

ANSWER TO PETITION FOR ESCHEAT—Filed February 20, 1954

*To the Honorable, the Judges of the said Court:*

1. After reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the averments of paragraph 1 of the petition and proof thereof is demanded.

2. The allegations of fact of paragraph 2 of the petition are admitted.

3. The allegations of fact of paragraph 3 of the petition are admitted.

[fol. 9] 4. The allegations of fact of paragraph 4 of the petition are admitted in part and denied in part. It is admitted that as part of its business the defendant carries on a telegraphic money order service, but it is denied that this service is for the transmission of money from person to person and from place to place. The defendant does not transmit money; it transmits only telegraph messages.

5. The allegations of fact of paragraph 5 of the petition are admitted in part and denied in part. It is admitted that the defendant has from time to time, at its offices and places of business in Pennsylvania, received various sums of money from divers persons who desired to send money orders, but it is denied that it received these sums of money for transmission to other persons. On the contrary, the defendant received these sums of money for transmission of telegraphic messages to the defendant's offices located nearest to the other persons, directing those offices to pay sums of money to the other persons, payment of the said sums to be made by delivering to the other persons negotiable drafts which the defendant agreed to cash immediately if cash was desired.

6. The allegations of fact of paragraph 6 of the petition are denied. The allegations set forth therein do not apply to each instance in which the defendant in Penn-

[fol. 10] sylvania received money from persons desiring to send money orders and, as set forth in paragraph 5 of this answer, the defendant in no instance received money for transmittal. In most instances, a person desiring to send a money order after entering the office of the defendant in Pennsylvania, filled out a money order application and handed the application to the telegraph clerk who calculated the charges and collected the same plus the principal amount of the money order from such person (the sender). The clerk or some other employee of the defendant then transmitted a telegraph message to the defendant's money-order office located nearest to the payee, directing that office to pay the principal amount of the money order to the payee, payment of the money order to be made by delivering to the payee a negotiable draft which the defendant agreed to cash immediately if cash was desired. In many instances during the period of time covered by the petition, however, there were variations from this procedure.

7. 8. 9. The allegations of fact of paragraphs 7, 8 and 9 of the petition are denied. The allegations thereof do not apply to each instance where the defendant in Pennsylvania received money from a person desiring to send a money order during the period of time covered by the petition. In many instances during this period of time, there were variations in the terms of the agreement between [fol. 11] the defendant and the sender. For the reasons set forth in paragraph 6 of this answer, it is denied that the defendant in any instance received money for transmittal. It is averred that in most instances in which the defendant received money in Pennsylvania from a person desiring to send a money order, the defendant agreed with the sender that if payment, by means of a negotiable draft issued by the defendant to the payee at its paying office, could not be effected within the respective time limitations mentioned in paragraph 7, 8 and 9 of the petition, the defendant would repay to the sender by means of a negotiable draft the principal amount of the money order.



10. The allegations of fact of paragraph 10 of the petition are denied in part and admitted in part. For the reasons set forth in paragraph 6 of this answer, it is denied that the defendant in many instances received money for transmittal. It is admitted that in many instances the defendant could not effect payment to a payee because the payee to whom a negotiable draft was to be issued in payment of the money order could not be found. In many instances the defendant paid the payee by issuing to the payee a negotiable draft, but neither the payee nor any other person thereafter presented the draft to the defendant for acceptance.

11. The allegations of fact of paragraph 11 of the petition are admitted. It is averred, however, that the defendant in many of the instances set forth in paragraph 10 above did not effect payment because the payee to whom a negotiable draft was to be issued in payment of the money order could not be found or the sender to whom a negotiable draft was to be issued in repayment of the money order could not be found. In many instances, however, the payee or the sender was paid or repaid by the issuance to him of a negotiable draft but the draft was not thereafter presented to the defendant for acceptance.

12. The allegations of fact of paragraph 12 of the petition are denied. It is averred that in many instances in which payment or repayment could not be made, as set forth in paragraph 11 hereof, more than seven years have elapsed from the time the sender was entitled to repayment or received a negotiable draft in repayment of the money received from the sender by the defendant.

13. The allegations of fact of paragraph 13 of the petition are denied. It is averred that in each instance in which the defendant at its offices and places of business in Pennsylvania received money from a person desiring to send a money order and did not effect payment or repayment as set forth in paragraph 11 hereof for more than seven years after the sender was first entitled to such repayment, the whereabouts of the sender have been un-



known for more than seven years and the sender, during such period of time, has neither made any claim for re-[fol. 13] payment nor, in a case where the defendant paid the sender by means of a negotiable draft, has the sender or any other person presented the draft to the defendant for acceptance.

14. The allegations of fact of paragraph 14 of the petition are denied. It is averred that in each instance where the defendant was unable to repay a sender by issuing to the sender a negotiable draft and in each instance in which a negotiable draft was issued to a sender in repayment, the defendant for a period of six years was ready, willing and able either to issue a draft to the sender or to accept a draft which had been issued but in many instances was unable to do so because the whereabouts of the sender were unknown to the defendant or the sender did not present the draft to the defendant. After such period of six years, any claim of the sender for repayment or for acceptance of a negotiable draft by the defendant was barred by Act 1713, March 27, 1 Sm. L. 76.

15. The allegations of paragraph 15 of the petition are denied for the following reasons:

(1) The defendant is a corporation organized and existing under the laws of and domiciled within the State of New York, and that state alone has the right and power to declare an escheat of any claims, debts and demands against the defendant arising out of its telegraphic money order [fol. 14] business. Such claims, debts and demands are not within or subject to the control of the Commonwealth of Pennsylvania. This Court is therefore without jurisdiction of the subject matter of this action, and Act 1889, May 2, P. L. 66, as amended, is unconstitutional if it purports to declare an escheat of such claims, debts or demands to the Commonwealth of Pennsylvania in that it deprives the defendant of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America.

(2) The alleged claims, debts and demands which are the subject matter of this action have been barred by Act 1713, March 27, 1 Sm. L. 76. The defendant, therefore, is

now the rightful and lawful owner of any personal property concerning which the petition in this case asks this Court to decree an escheat, and such a decree would deprive the defendant of property without due process of law, would take the property of the defendant without just compensation and would impair the obligation of the contracts entered into between the defendant and the senders and payees of money orders, contrary to Article One, Sections 10 and 17, of the Constitution of the Commonwealth of Pennsylvania and contrary to the Fourteenth Amendment of the Constitution of the United States of America.

(3) In all instances where negotiable drafts were issued [fol. 15] sued by the defendant to the senders or payees of money orders, the defendant by such issuance fully and completely paid the said senders or payees, and since the dates of issuance of the said negotiable drafts the defendant has not been obligated to the said senders or payees, and the defendant does not now have in its possession or control any negotiable instruments made escheatable by the Act of 1889, as amended.

(4) To grant the prayer of the petition would deprive the defendant of property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States of America because in all instances where the senders of money orders from the Pennsylvania offices of the defendant were at the time of sending such money orders transients within the state and resided or were domiciled in other states, or where the senders if residents of or domiciled in Pennsylvania at the time of sending money orders have since changed their residence or domicile to another state, or where the payees of money orders at the time of sending money orders to them from the Pennsylvania offices of the defendant resided or were domiciled in states other than Pennsylvania or have at any time since resided or had their domicile in states other than Pennsylvania, the defendant is now or may be subject to multiple liability for the reason that the state or states of residence or domicile of the said senders or

payees have declared or may declare an escheat of any [fol. 16] claims, debts or demands of such senders or payees.

(5) This Court is without jurisdiction of the subject matter of this action for the reason that any claims, debts and demands which are involved are the property of the senders or payees of money orders at the domicile of the said senders or payees subject only to the jurisdiction of the state of domicile of the said persons.

(6) The Act under which this proceeding is brought is contrary to the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America in that it makes no provision for due and proper notice to payees or senders of the money orders involved and this proceeding is likewise contrary to the Constitution of the Commonwealth of Pennsylvania and the Constitution of the United States of America in that due and proper notice has not in fact been given to the said senders and payees.

Wherefore your petitioner prays that the petition for escheat be dismissed.

And your petitioner will ever pray, etc.

Rex Rowland, Smith, Buchanan, Ingersoll, Rodewald & Eckert, Attorneys for Defendant, 1301 Alcoa Building, Pittsburgh 19, Pennsylvania.

[fol. 17]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

PETITION FOR ORDER FIXING TIME AND PLACE OF HEARING  
AND DIRECTING SERVICE OF NOTICE BY POSTING AND PUBLICATION

*To the Honorable the Judges of the said Court:*

The Petition of the Commonwealth of Pennsylvania, by Sidney Gottlieb, Escheator, respectfully represents as follows:

1. A Petition for Escheat was filed in the above matter by the Commonwealth of Pennsylvania against The Western Union Telegraph Company, setting forth that the defendant, at its places of business in Pennsylvania received various sums of money from divers persons for transmittal to other persons by the use of "Money Orders", that in a number of instances the defendant could not effect payment of the money orders, and the senders thereof were entitled to a refund from the defendant, because the whereabouts of the senders were and have been unknown for more than seven years, and that such moneys have been unclaimed for the said period of time.

2. The defendant has filed an Answer, raising issues of fact and questions of law.

3. Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of [fol. 18] the senders or other persons entitled thereto have been unknown for more than seven years and until the present time.

Your Petitioner, therefore, prays that an order be entered fixing a time and place for hearing, and directing that notice of the filing of the Petition for Escheat and of the time and place fixed for hearing be served personally upon the defendant and upon all other persons having or claiming an interest in the property sought to

be escheated, by posting in the office of the Prothonotary of this Court and by publication in a newspaper or newspapers of general circulation in the form and manner directed by such order.

And your Petitioner will ever pray, etc.

Sidney Gottlieb, Escheator of the Commonwealth  
of Pennsylvania.

[Affidavit Omitted]

[fol. 19]

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

ORDER FIXING TIME AND PLACE OF HEARING AND DIRECTING  
POSTING AND PUBLICATION OF NOTICE THEREOF—March  
10, 1958

And now, this 10th day of March, 1958, upon consideration of the within petition, and upon motion of Sidney Gottlieb, Escheator, it is

Ordered that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19th day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing.

The notices shall be in substantially the following form:

## ESCHEAT NOTICE

To all persons whatsoever claiming an interest in the personal property herein referred to:

Take notice that a Petition for Escheat has been filed in the Court of Common Pleas of Dauphin County, Com-[fol. 20] monwealth Docket No. 236 of 1953, by the Commonwealth of Pennsylvania against The Western Union Telegraph Company, for the escheat of property held or owing by The Western Union Telegraph Company, a corporation of the State of New York, the owners or beneficial owners of, or persons entitled to, the said property, or the whereabouts of such owners, beneficial owners or persons entitled, having been and remained unknown for the period of seven successive years, or the said property having been unclaimed for the period of seven successive years.

The said Petition for Escheat is on file in the office of the Prothonotary of Dauphin County, and is open to the examination of any party in interest.

The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.

The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years.

You are further notified that the Court has fixed Court Room No. 4, Harrisburg, Pennsylvania, as the place, and Monday, the 19th day of May, 1958, at 10 o'clock a.m., as the time of hearing on the said Petition for Escheat. If you intend to claim such property or any portion there-

of, or intend otherwise to show cause to the Court why such property or any portion thereof shall not escheat to the State, you shall, at or before the time fixed for hearing, file with the Clerk of the Court a written notice of your claim and the amount thereof, and at the time and place fixed for hearing appear in person or by duly authorized counsel and substantiate your claim, otherwise, unless cause to the contrary is shown, a judgment of escheat of the said property to the Commonwealth of Pennsylvania may be entered.

Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania.

By the Court: William H. Neely, Judge.

[fol. 22]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

STIPULATION OF FACTS—Filed April 18, 1958

It is agreed by and between the parties hereto that the following facts shall become a part of the record at the trial of this action with the same force and effect as though established by the production of proof thereon:

1. The Western Union Telegraph Company (hereinafter referred to as Western Union) is a corporation organized and existing under the laws of the State of New York with its principal place of business located at #60 Hudson Street, New York, New York. Western Union is authorized to do business in the Commonwealth of Pennsylvania.

2. Western Union is authorized to do business in the states of the United States, the District of Columbia and foreign countries and as a part of its business carries on a telegraphic money order service as more fully hereinafter described. Western Union on or about October 7, 1943, pursuant to permissive legislation enacted by the Congress of the United States of America (Section 222, Communications Act of 1934 as amended), merged with Postal-Telegraph, Inc., a Delaware corporation, and operating and



sales subsidiary companies. In so merging, Western Union assumed the obligations of Postal-Telegraph, Inc., and [fol. 23] subsidiary companies (hereinafter referred to collectively as Postal).

3. In the conduct of its telegraphic money order service Western Union has at all times been engaged in interstate, intrastate and foreign commerce and has been subject to regulation by the Interstate Commerce Commission from 1916 to 1934 and by the Federal Communications Commission from 1934 to the present and by similar public service regulatory bodies in the District of Columbia and in the several states including the Commonwealth of Pennsylvania. Available regulations governing said telegraphic money order service of Western Union are set forth in the following books of rules which are marked in evidence as Exhibits as follows:

Exhibit D-1—8th Edition, Book of Rules of December 1, 1916, Pages 111-120;

Exhibit D-2—9th Edition, Book of Rules of October 1, 1918, Pages 113-126;

Exhibit D-3—10th Edition, Book of Rules of February 1, 1920, Pages 115-134;

Exhibit D-4—11th Edition, Book of Rules of February 1, 1923, Pages 118-143;

Exhibit D-5—12th Edition, Book of Rules of February 1, 1926, Pages 120-153;

[fol. 24] Exhibit D-6—13th Edition, Book of Rules of April 1, 1934, Pages 95-142;

The foregoing books of rules as adopted by Western Union were filed with the existing federal and state regulatory bodies as the tariff regulations of the company applicable to its telegraphic money order service and were approved by such regulatory bodies. In 1938 the Federal Communications Commission directed Western Union to file its money order tariff in a different form, to clarify certain material therein and to eliminate other material there-



from. In pursuance of such direction Western Union on December 15, 1938, filed with the Federal Communications Commission its tariff FCC No. 179 in loose-leaf form, photostatic copy of which is marked in evidence as Exhibit D-7. Since 1939 the money order service tariffs of Western Union filed with the various state regulatory commissions have been in substantially the same form as the tariffs filed with the Federal Communications Commission. Western Union has continued to publish its rules in book form and the 14th Edition of its money order book of rules of September 1, 1939, is marked in evidence as Exhibit D-8.

4. In the conduct of its money order service, Western Union used the following forms, together with such other forms as are set forth or referred to in the several books of rules noted above:

- (a) Money order application—See Ex. D-3, Page 130; Ex. D-4, Pages 136, 137; Ex. D-5, Page 138; Ex. [fol. 25] D-6, Page 126; Ex. D-8, Page 95.
- (b) Senders receipt—See Ex. D-5, Page 140; Ex. D-6, Page 127; Ex. D-8, Page 96.
- (c) Money order draft—See Ex. D-3, Page 131; Ex. D-4, Page 138; Ex. D-5, Page 144; Ex. D-6, Page 128; Ex. D-8, Page 97.
- (d) Money order message transmittal form—See Ex. D-5, Page 143; Ex. D-6, Page 129; Ex. D-8, Page 98.
- (e) Money order notice (caution order)—See Ex. D-5, Page 141; Ex. D-6, Page 130; Ex. D-8, Page 99.
- (f) Money order notice (vigilant order)—See Ex. D-5, Page 142; Ex. D-6, Page 131; Ex. D-8, Page 100.
- (g) Bank money order, advice to bank—See Ex. D-4, Page 140; Ex. D-5, Page 146; Ex. D-6, Page 132; Ex. D-8, Page 101.
- (h) Bank money order draft—See Ex. D-3, Page 131; Ex. D-4, Page 139; Ex. D-5, Page 149; Ex. D-6, Page 133; Ex. D-8, Page 102.

- (i) Notice to sender of undelivered money order—See Ex. D-5, Page 148; Ex. D-6, Page 134; Ex. D-8, Page 103.
- (j) Notice to accompany refund draft—See Ex. D-6, Page 135; Ex. D-8, Page 104.
- [fol. 26] (k) Money order draft, refund to sender—See Ex. D-3, Page 131; Ex. D-4, Page 139; Ex. D-5, Page 147; Ex. D-6, Page 136; Ex. D-8, Page 105.

The form of senders receipt appearing in Exhibit D-8 went into use on July 31, 1935. The form of senders receipt appearing in exhibits of earlier dates remained substantially unchanged from 1916 to July, 1935. Exhibits D-1 to D-6, inclusive, and D-8 do not show the printed conditions appearing on the reverse side of the various Western Union money order application forms in use from 1916 through 1938. The following application forms or photostatic copies thereof, together with the conditions printed on the reverse side are marked as exhibits in this action and are a part of the proof in this action:

- Ex. D-9, application form 72 in use prior to 1915 and through December 1, 1916;
- Ex. D-10, application form 72 A in use from December 1, 1916 to October, 1920;
- Ex. D-11, application form 72 B in use from October, 1920 to August, 1921;
- Ex. D-12, application form 72 E in use from August to September, 1921;
- Ex. D-13, application form 72 F in use from September, 1921 to June or July, 1931;
- [fol. 27] Ex. D-14, application form 72 H in use from June or July, 1931 through 1938.

Application forms 72 C and 72 D were used during a limited period in the 1920's for the making of a duplicate or carbon copy of the original filled out by the sender. Copies of application forms 72 C and 72 D cannot be located. A search of old records indicates that Western Union never issued an application form designated 72 G.

For the purposes of this proceeding the parties hereto agree that telegraphic money order transactions of Western Union during the period 1939-1948 were handled under tariff provisions, rules and regulations and forms substantially similar to those found in Exhibits D-7, D-8 and D-14.

5. In its simplest and most common form the procedure observed in the handling of a Western Union money order is as follows:

The sender enters the office at point of origin, fills out money order application (paragraph 4 (a), supra) and hands the application to the telegraph clerk who calculates the charges and collects same plus the principal amount of the money order from the sender. The clerk then prepares a receipt (paragraph 4 (b), supra) which is given to the sender. The clerk or some other employee then transmits a telegraph message to the company's money order office located nearest to the payee, directing that office to pay the [fol. 28] principal amount of the money order to the payee in the form of a negotiable draft. The message between the company offices, partly in cipher, contains all pertinent information found on the application filled out by the sender. On receipt of the message, after checking for apparent errors and finding none, the office of destination prepares a money order draft (paragraph 4 (c), supra) payable to the named payee, together with a money order notice, caution or vigilant (paragraph 4 (c) or (f), supra) which notice is then delivered to the payee. The latter upon calling at the office and satisfactorily identifying himself is given the money order draft, counter-signed in his presence. The payee endorses the draft, hands it back and receives cash in the amount specified or, if he prefers, he may take the draft away with him to make such use thereof as he sees fit in which event he is required to sign a receipt for the draft. In the event that the payee cannot be located for the delivery of the money order notice, or in the event that he fails to call for the draft within 72 hours, the office of destination transmits a message to the office of origin advising the latter of

the reasons for nonpayment. The office of origin then sends a notice (paragraph 4 (i), supra) to the sender and when the sender calls at the office he receives a [fol. 29] draft (paragraph 4 (h), supra) which he may endorse and cash immediately at the office or, if he prefers, may carry it away with him. Variations of the foregoing are set forth in the tariffs, rules and regulations referred to heretofore.

6. From 1916 (and prior thereto) to the present, payment of Western Union money orders destined to foreign countries has been effected through connecting carriers, banks and other such media.

7. Cash received by Western Union for money orders, and not otherwise disbursed or treated by the company as set forth in paragraph 8 below, is deposited, along with other moneys of the company, in the general bank account or accounts of the company used for the carrying on of the company's general corporate business. No distinction is made by the company in the deposit of the moneys received for money orders and other moneys received by the company for any of its other services or otherwise. One deposit may include moneys received for money orders and other moneys received by the company. No separate account or accounts are maintained for payment of Western Union money orders. From 1916 (and prior thereto) to the present Western Union money order drafts have been drawn only on the company's fiscal and sub-fiscal agents located in major cities in the various geographical [fol. 30] areas of the country, said agents, as of this date, being as follows:

#### *Fiscal Agents*

<i>City and State</i>	<i>Name of Bank</i>
New York, New York	The Chase Manhattan Bank
Atlanta, Georgia	Citizens & Southern National Bank
Chicago, Illinois	Continental Illinois Natl. Bank & Trust Co.
Dallas, Texas	First National Bank
San Francisco, California	The Bank of California

*Sub-Fiscal Agents*

Minneapolis, Minn.	First National Bank
Omaha, Nebraska	Omaha National Bank
Denver, Colorado	First National Bank
Kansas City, Missouri	Commerce Trust Co.
Little Rock, Arkansas	Commercial National Bank
New Orleans, Louisiana	Whitney National Bank
St. Louis, Missouri	First National Bank
Los Angeles, California	Security First National Bank

At no time from 1916 to the present were Western Union money order drafts or Postal telegraphic money order drafts drawn on a bank or other paying agent located with- [fol. 31] in the Commonwealth of Pennsylvania. The amount of the general funds of the company in the bank accounts maintained by it in the conduct of its business always exceeded the amount necessary to pay the total of the outstanding money orders.

8. The principal bookkeeping and accounting controls maintained in order to facilitate the operation of the company's money order service may be summarized as follows:

*A. Independent District Offices.*

- (1) The manager or clerk accepting a money order records the receipt of the money in a daily Cash Record form 2566 F, marked in evidence as Exhibit D-15. The cash is placed in the cash drawer intermingled with monies collected for telegrams and other receipts. The cash is used for the purpose of paying incoming money orders and any cash expenditures enumerated on form 218, Other Disbursements and Credits—District Offices, marked in evidence as Exhibit D-16 and form 223, Payroll Summary—District Offices, marked in evidence as Exhibit D-17. Accumulation of surplus cash, if any, is deposited in a local bank account maintained by the

office manager in the name of Western Union. Accumulation of excess funds, if any, in the bank account is remitted by the manager in the form of a check to the Division Headquarters Cashier who [fol. 32] deposits the check in the account maintained at the divisional fiscal or sub-fiscal agency in the name of Western Union. The check from the manager to the cashier is accompanied by form 65 A, Notice of Remittance of Negotiable Paper to General Manager, marked in evidence as Exhibit D-18. In the event that the amount in the manager's bank account, together with cash on hand is, at any time, insufficient to meet the payment of incoming money orders and other expenses, the manager calls upon the Division Headquarters Cashier to furnish a check to meet the deficit and such check is forwarded as promptly as practicable.

- (2) At the close of his or her tour of duty, each clerk handling money orders completes the reverse side of the daily Cash Record (Ex. D-15). The completed daily Cash Records are summarized the following morning on Daily Summary of Receipts and Disbursements, form 213, marked in evidence as Exhibit D-19 and the totals of all receipts (including money order principal from column 7 of form 213) and disbursements are then recorded on the corresponding lines of form 217, Revenue and Disbursement Summary-District Offices, marked in evidence as Exhibit D-20. Form 217 is completed at [fol. 33] the end of the month and submitted to the controlling accounting center. The latter summarizes the forms 217, sent to it by all offices under its control and then submits the summary to the Division Auditor.
- (3) As indicated, drafts on incoming money orders are cashed when the payee so desires, the funds for such payments coming from monies collected for telegrams, principal and charges on outgoing money orders and other receipts. At designated intervals, the manager forwards cashed money order drafts,

accompanied by form 3828 A, Money Order Drafts Remitted, marked in evidence as Exhibit D-21, to the Division Auditor. The manager takes credit for the amounts of the drafts so forwarded in column 36 of form 213 (Ex. D-19) and line 48 of form 217 (Ex. D-20). At designated intervals, the manager also forwards to the Division Auditor, the money order applications accompanied by Statement of Money Order Applications forwarded to Division Auditor, form 3550 A, marked in evidence as Exhibit D-22.

*B. Main City Offices and Branch Offices  
Reporting Thereto.*

- (1) The clerk at either the branch or main city office accepting a money order makes record thereof in [fol. 34] the money order section of the daily Cash Record (Ex. D-15) and places the money in the cash drawer intermingled with monies collected for messages and other receipts. The branch office manager may make cash disbursements only to cover incoming money orders and payroll expenses. Accumulation of surplus cash, if any, by a branch office manager is deposited in a local bank account in the name of Western Union under the jurisdiction of the main office cashier who may draw upon the local bank for the accumulation of excess funds on deposit at such local bank thereafter depositing the amount withdrawn in the main city office bank depository in the name of Western Union. In the event that the cash collected at the branch office is insufficient to meet the payment of incoming money orders and pay vouchers the main office cashier sends to the branch office the required additional cash. Accumulation of funds in the cashier's main office depository in excess of his requirements to meet payment of incoming money orders, pay vouchers and other expenses, is remitted by negotiable instrument to the Division Headquarters Cashier in the same manner in which a district office remits such excess funds.



[fol. 35] (2) At the close of the day the branch office manager completes forms 2566 F (Ex. D-15), summarizes them when more than one employee is involved, and reports the totals to the Accounting Center manager or Chief Bookkeeper at the main office through the medium of form 1688, Daily Report of Revenue and Receipts, marked in evidence as Exhibit D-23. The main office cashier completes form 1687, Daily Report of Cashier, marked in evidence as Exhibit D-24, and submits same to the Accounting Center Manager or Chief Bookkeeper. Money order principal is shown on line 5 of forms 1687 and 1688. The Accounting Center Manager or Chief Bookkeeper summarizes all forms 1687 and 1688 received from the main and all branch offices and records the totals on form 260, Summary of Daily Charges and Credits, marked in evidence as Exhibit D-25. All forms 260 are forwarded to the Division Auditor by the Accounting Center Manager or Chief Bookkeeper.

- (3) The branch office manager forwards money order applications to the main office Accounting Center Manager or Chief Bookkeeper who, at designated intervals, consolidates them and forwards them to the Division Auditor. As in the case of district offices, [fol. 36] drafts on incoming money orders are cashed and paid out of monies collected for telegrams, principal and charges on outgoing money orders and other receipts. At the close of each day, the branch office manager forwards the cashed money order drafts, accompanied by form 3828 A (Ex. D-21), to the main office cashier. The latter combines the drafts cashed at all offices under the jurisdiction of the main office and forwards them at designated intervals to the Division Auditor.
- (4) Except as indicated above, the accounting treatment of money orders handled through main city offices is substantially the same as that of money orders handled through district offices.



### C. *Railroad Agency Offices.*

- (1) The manager or clerk accepting a money order records the receipt of the money on one of the lines, 49 to 55, of form 4-D, Monthly Report, marked in evidence as Exhibit D-26. The cash is placed in the cash drawer intermingled with monies collected for telegrams and other receipts. The manager uses the cash to pay incoming money orders when a payee desires that the draft be cashed and any other ex-[fol. 37] penses payable in cash enumerated on lines 26 through 29 of form 4-D. Depending upon the particular arrangement in effect, accumulation of excess cash, if any, is either deposited in the local bank account maintained by the manager for later remittance to the Western Union Division Headquarters Cashier, or may be remitted immediately to such official, accompanied by form 65 A (Ex. D-18); or it may be merged with funds of the railroad company subject to subsequent net settlements between the railroad company and the Western Union. In the event that cash available at any office is insufficient to meet payments on incoming money orders and other expenses, additional funds are forwarded to the office by the Western Union Division Headquarters Cashier.

Cash received for the money orders in some cases is placed in the cash drawer of the railroad company intermingled with other monies received by Western Union and the railroad company and in other cases the cash so received is placed in the cash drawer of Western Union intermingled with other monies received by Western Union.

The manager or clerk referred to herein in Paragraph 8 C is the employee of the railroad company.

- [fol. 38] (2) Drafts on incoming money orders are cashed when the payee so desires and paid out of monies collected for telegrams, principal and charges on outgoing money orders and other receipts. The manager then deposits such drafts in the local bank ac-

count or he may negotiate such drafts which are eventually charged back to the account of the Western Union Division Headquarters Cashier.

- (3) At the close of the month, the manager completes form 4-D and sends it to the headquarters office of the railroad company where it is consolidated with forms 4-D submitted by managers of other offices on the same railroad and a summary of the consolidated forms is submitted to the Western Union Division Auditor. At designated intervals, the manager forwards the money order applications to the Western Union Division Auditor.

#### D. *General*

- (1) The Division Auditors of the various divisions, associate or match all money order drafts with money order applications and issue and follow up inquiries regarding differences between drafts and applications. They also initiate and follow up inquiries regarding situations where no applications are on [fol. 39] hand for drafts issued and where no drafts are on hand for applications submitted to them. With respect to the latter two situations, applications, correspondence and other papers relevant thereto are preserved for a limited period (See paragraph 9, *infra*) and thereafter are destroyed following the making of the ledger entry referred to in the Summary and Schedules incorporated in Exhibits A and B, referred to in paragraph 17, *infra*. In those instances where the ledger entry does not show the name of the sender even when the draft was issued to the sender rather than to the payee designated on the application, the failure to include the sender's name on the ledger entry is explained by the fact that a draft issued to a sender contains sufficient detail to enable it to be matched with the ledger entry when and if the draft is returned to the Division Auditor. (In 1947, Western Union established, at Minneapolis, a central clearing agency known as

the Money Order Auditor and since then all money order drafts and applications have been forwarded to and cleared through that office. Since 1947 the Money Order Auditor has taken over the functions described above performed by the Division Auditors in prior years.)

- (2) Each Division Auditor summarizes the aggregate amount of received money order principal shown on [fol. 40] all forms submitted to him and summarizes the aggregate amounts of all monies paid out on money orders in his division and, on the basis of these summaries, enters in his accounts certain debits and credits in accordance with regulations contained in the Uniform System of Accounts, prescribed by the Interstate Commerce Commission and the Federal Communications Commission. An outline of the accounting procedures so prescribed is marked in evidence as Exhibit D-27. Each Division Auditor periodically submits a statement of net charges to the Auditor of Landlines at New York and, from the information therein contained, the Auditor of Landlines makes the proper entry on the general books of the company, again conforming to the procedure prescribed in said Uniform System of Accounts. As appears from said Exhibit D-27, during the periods pertinent in this action, funds received by the company as principal on money order transactions and credited to "Miscellaneous Accounts Payable—Telegram Transfers" were, when no claim was made therefor within six months, credited to "Other Non-transmission Revenue" and treated as income. Though not authorized by any specific regulation of the Interstate Commerce Commission, the defendant's practice of crediting such funds to "Other Non-transmission Revenue" and treating same as income after the expiration of the six month period was followed with the knowledge of and without objection on the part of the said Commission or its representatives during the entire period pertinent to this controversy and until January 1, 1943,

as of which date, under a specific regulation of the Federal Communications Commission, funds received by the Company as principal on money order transactions were, when no claim was made therefor within two years after date of acceptance, credited to "Extraordinary Current Income Credits" and treated as income. Copy of said regulation of the Federal Communications Commission, which is still in effect, is attached hereto and marked in evidence as Exhibit D-28.

- (3) Funds in the Division Headquarters Cashier's bank account, maintained at the fiscal or sub-fiscal agency, comprising remittances from all offices in the division are used to meet the headquarters payroll and other expenses as well as for the purpose of meeting payment of negotiated money order drafts and to finance deficit offices within the division. Accumulation of surplus funds, if any, is remitted to the com-[fol. 42] pany Treasurer. If the funds in the bank account of the Division Headquarters Cashier are insufficient to meet all payments and cash deficits in offices within his division he calls on the Treasurer for Authority to draw on the latter for funds to meet the deficit.

9. Western Union handles millions of messages and millions of money orders annually. Under regulations of the Federal Communications Commission and, prior to 1934 under the regulations of the Interstate Commerce Commission, relating to the preservation of records, telegraph companies are and were required to preserve records on individual message and money order transactions for comparatively limited periods of time and customarily destroy and destroyed such records at or shortly after the expiration of the prescribed periods. Where Western Union's money order drafts have been presented and cashed by it, all records relating to the particular transactions are and have been destroyed at or shortly after the expiration of the prescribed period. Attached hereto and marked in evidence are Exhibit D-29, excerpts from "Regulations to Govern

the Destruction of Records of Telephone, Telegraph and Cable Companies" prescribed by the Interstate Commerce Commission and in effect from February 1, 1914, to January 1, 1920; Exhibit D-30, excerpts from "Regulations to Govern the Destruction of Records of Telephone, Telegraph [fol. 43] and Cable Companies" prescribed by the Interstate Commerce Commission in 1920, adopted by the Federal Communications Commission in 1934 and in effect from January 1, 1920, to September 5, 1938; and Exhibit D-31, excerpts from "Rules of Telecommunication Carriers" prescribed by the Federal Communications Commission and in effect from September 6, 1938, to October 1, 1950.

10. In numerous instances telegraphic money orders are sent in pursuance of a prior agreement or understanding reached between the sender and payee and in numerous instances are sent in answer to a specific request made by the payee to the sender. In numerous instances the sender or payee is a resident of a state other than the one from or to which the money order is sent.

11. From 1916 to the present (and throughout the history of its money order service) Western Union has considered payment of the order, within the meaning of the provision permitting cancellation on the sender's request, effected at the moment the draft is delivered to the designated payee and it has not and will not, except in conformity with a court order so directing, cancel a money order transaction on request of the sender received at the office of destination after that office has delivered the draft to the payee.

12. On numerous occasions during the period 1915 to 1948 various offices of Western Union and Postal throughout [fol. 44] the country were burglarized and personnel on duty therein robbed. Monies received from patrons as money order principal often were among the funds stolen during the commission of such crimes but in no such instance did the telegraph company attempt to shift responsibility for the loss to the patron.

13. In 1955, the State of Washington enacted the Uniform Disposition of Unclaimed Property Act, Chapter 385,

Laws of 1955 (amended by Chapter 11, Laws of 1955) and in 1956 Arizona enacted Chapter 126 Laws of 1956, embodying with some modifications the provisions of the uniform act drafted by the National Conference of Commissioners on Uniform Laws. Items appearing on Schedules B and C, incorporated in Exhibits A and B, referred to in Paragraph 17, *infra*, originating in and/or destined to the States of Washington or Arizona may fall within the provisions of Section 9 of the Washington Act or Section 44-359 of the Arizona Act, the so-called "omnibus" sections of those statutes. The said statutes were enacted after the institution of the present proceeding. No action against Western Union has been instituted by the State of Washington or the State of Arizona under the provisions of the Washington or Arizona statutes, respectively.

14. In 1950, the Commonwealth of Massachusetts through its Commissioner of Revenue and Taxation also presented [fol. 45] claim against Western Union for the principal amounts of so-called "unclaimed" money order principal arising from the Massachusetts transactions of Western Union, contending that funds of this nature were escheatable to the Commonwealth of Massachusetts under the provisions of its Abandoned Property Act, Chapter 801, Acts of 1950; Massachusetts General Laws, Chapter 200A. Western Union, pointing out that said statute by its terms did not purport to apply to any abandoned property "if the period of time provided by any statute of limitations applicable to the owner's right as against a holder has expired," refused to file the report required by the act so far as pertinent to money order transactions. As of this date, the Commonwealth of Massachusetts has failed to commence any legal proceedings against Western Union under the provisions of said Abandoned Property Act.

15. All amounts covered by the items listed on Schedule D incorporated in Exhibits A and B, referred to in paragraph 17, *infra*, were paid by the defendant to the Comptroller of the State of New York under the provisions of the New York Abandoned Property Law, Section 1309, et seq. The Schedule D items listed for the years 1930-1933, inclusive, were included on the first report filed in New York



State and were paid to New York State in September 1949. [fol. 46] The Schedule D items listed for the years 1934, 1935, 1936 and 1937 were included on the subsequent annual reports and were paid in April or May 1950, 1951, 1952 and 1953, respectively. In making such payments to the Comptroller of the State of New York, Western Union conformed to and complied with all requirements of said statute. Items listed on Schedule E of said Exhibits A and B were reported to the Comptroller of the State of New York, along with other items (all involving situations where money order drafts were issued outside the State of New York) in separate schedules of the reports filed annually with said Comptroller. Western Union has refused to pay over to said Comptroller the amounts covered by the items listed on said Schedule E, notwithstanding the fact that the Attorney General of the State of New York has rendered a formal opinion to the effect that, quoting annotations to Section 1309, Abandoned Property Law of New York:

"This section is constitutional as applied to money orders accepted by telegraph company for delivery outside the state but within continental limits of United States."

. . . . .

"Money orders accepted by telegraph company, a domestic corporation, for delivery outside the state but within continental limits of United States are within the provisions of this section and amount held or owing [fol. 47] for the payment thereof after fifteen years must be paid to State Comptroller."

"1950, Op. Atty. Gen. 130."

Western Union and the Attorney General of the State of New York submitted the controversy involving said monies to the Appellate Division of the Supreme Court of the State of New York on an Agreed Statement of Facts, and the action is now awaiting hearing before that Court.

16. In the vast majority of its money order transactions Western Union succeeds in effecting delivery of the draft to the designated payee or to the sender if the payee can-

not be found. In comparing the number of drafts issued to the designated payee as against the number issued to the sender a study by sampling process of drafts issued on December 1, 1952, discloses the following:

#### ANALYSIS OF DEC. 1, 1952 DRAFTS

<i>Selected Control Units Reviewed</i>	<i>Number of Drafts Issued To Payee                      To Sender</i>	
Georgia-Idaho-Iowa	1,315	11
Maine, Maryland, Nebraska, Nevada, New Hampshire, New Mexico and No. Dakota	1,264	10
Oklahoma, Oregon	617	7
Rhode Island, So. Carolina, So. Dakota and Tennessee	1,243	5
Totals:	<hr/> 4,439	<hr/> 33

[fol. 48] 17. When, through no fault of its own, it is unable to issue the money order draft to the payee, Western Union cancels the money order transaction and endeavors to pay the amount of the money order to the sender in the manner hereinbefore set forth. Such payment to senders, through no fault of Western Union, has not always been accomplished as appears from the answer filed by the company in this action. Information from available records of the company has been compiled by the company and has been incorporated into Exhibit A covering the period from the earliest day for which records are available through December 31, 1946, and Exhibit B covering the period January 1, 1947, through December 31, 1948—both of which exhibits are attached hereto and admitted into evidence in this action as if established by formal proof. Each of said Exhibits A and B consists of a Summary and Schedule A relating to Pennsylvania intrastate money order transactions; Schedule B relating to money order transactions originating in Pennsylvania and destined elsewhere; Schedule C relating to money order transactions originating elsewhere and destined to Pennsylvania; Schedule D relating to money order transactions, the principal amounts of which have been paid to the State of New York under the provisions



of its Abandoned Property Law (see Paragraph 13, *supra*); and Schedule E relating to money order transactions which have been reported but not paid to the State of New York. [fol. 49] Insofar as the records of the company disclose, no demand for payment has been received by the company from the sender or the payee on any of the items set forth in the Schedules incorporated into said Exhibits A and B.

18. The parties agree that Postal money orders issued during the period January, 1930, to December, 1948, may be considered as having been handled under rules, regulations, practices and procedures substantially similar to those in effect for Western Union money orders during the same period.

19. It is agreed that since the date of compilation of Exhibit A referred to in Paragraph 17 hereof, the following items, the first two of which are listed in Schedule A, and the third of which is listed in Schedule C, of the said Exhibit have been cleared:

<i>Date</i>	<i>Amount</i>	<i>Origin</i>	<i>Destination</i>	<i>Payee</i>
7-19-46	\$ 2.00	Johnstown, Pa.	Johnstown, Pa.	Mrs. J. Bregman,
12-23-35	\$23.72	Charleroi, Pa.	Uniontown, Pa.	County Treas. of Fayette County
10- 8-46	\$ 6.00	Newark, N.J.	Collegeville, Pa.	E. G. Duffy

20. This stipulation does not include an agreement as to the materiality of the facts above stated. Either party may object to the materiality or relevance of any of the facts above stated.

[fol. 50] 21. Either party may present such other evidence at the trial of this cause as it may see fit.

The Western Union Telegraph Company, By Rex Rowland, Buchanan, Ingersoll, Rodewald, Kyle & Buerger, Attorneys for Defendant, 1301 Alcoa Building, Pittsburgh 19, Pennsylvania.

Commonwealth of Pennsylvania, By Sidney Gottlieb.

[fol. 51]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

OPINION—Filed December 15, 1958

By the Court:

This is an escheat proceeding. The matter is before us on the petition of the escheator who was appointed by the Secretary of Revenue. The respondent has filed an answer, wherein it is denied that the property mentioned in the petition is escheatable.

The petitioner seeks to escheat the moneys which were received at its offices and places of business in Pennsylvania for transmittal by telegraphic communication to respondent's places of business designated by the senders for payment to payees. It is averred in the petition that the respondent by money orders directed its paying offices at the points of destination to make payment to the payees named by the senders. The petition avers that the respondent agreed that if payment could not be effected within seventy-two hours after the receipt of these moneys at its paying offices, refund of the moneys deposited for the money orders would be made to the senders by the respondent; and that these moneys deposited have been unpaid and unclaimed for more than seven years.

The respondent contends that these moneys deposited in Pennsylvania are not escheatable because the defendant is [fol. 52] a New York corporation and that there may be liability for escheat in that State and other States. It is contended also that the escheat of these moneys would be in violation of due process of law because the respondent would not be protected against multiple liability in other States to which these money orders were sent. It is contended that the escheat of these moneys would be unconstitutional, as impairing the obligation of contracts, and that there is a violation of due process because the notice that was given of the hearing in this matter was inadequate.

This matter came on for hearing on May 19, 1958 in Court Room No. 4, pursuant to an order of the Court fixing

the hearing for that date. The escheator and the respondent appeared at that hearing by counsel. Depositions were taken. These depositions were supplemented by stipulations which were put into the record by agreement of both parties. These stipulations we believe contain those facts that are essential to the disposition of this case, and we adopt the stipulations as our factual findings in this matter. And since there is no dispute in the testimony taken at the hearing, we accept also the depositions as our findings in this case. While we accept all of this testimony as our factual findings, we herein state the facts in this case which we feel are of particular significance and accordingly make the following  
[fol. 53]

#### FINDINGS OF FACT

1. The respondent is a New York corporation.
2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania.
3. There were thousands of transactions.
4. These transactions have been referred to as money orders.
5. Each sender deposited moneys with the understanding that the respondent would transmit a telegraphic communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee.
6. Prior to December 31, 1946, a total of \$6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.
7. Prior to December 31, 1946, a total of \$615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph Inc., to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.
8. Payments were to be made to payees at the destinations specified by senders.

[fol. 54] 9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph Inc., to be paid at Pennsylvania destinations, amounted to \$6,755.49, all of which is unclaimed.

10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of \$31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed.

11. Prior to December 31, 1946, there was deposited with Postal Telegraph Inc., the sum of \$2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed.

12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to \$33,853.82, all of which is unclaimed.

13. From January 1, 1947 to December 31, 1948, money orders totalling \$1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to [fol. 55] payees at destinations in Pennsylvania, and \$4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed.

14. The respondent, the said Western Union Telegraph Company, a New York corporation, merged with Postal Telegraph Inc., a Delaware corporation, on or about October 7, 1943.

15. The New York corporation, respondent herein, was the surviving corporation and assumed all the obligations of the merged corporation, Postal Telegraph Inc., and its subsidiaries.

16. At the respondent's offices in Pennsylvania, the cash received on account of the purchase of money orders was commingled with daily receipts.

17. The surplus of these daily receipts in Pennsylvania over expenditures was deposited in local banks, and from time to time excess funds remitted to the respondent's out-of-state depositories. Money orders were drawn on these depositories.

18. It is not shown, however, that funds for the payment of money orders were earmarked and set aside from the general funds of the respondent on deposit anywhere.

19. The respondent contracted with persons purchasing money orders that if payment was not made to the payees [fol. 56] at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded.

20. Such refunds were to be made at the point of origin, i.e., the point where the senders purchased the money orders in Pennsylvania.

21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed.

### Discussion

It has been held with respect to an escheator's petition that it is "the duty of a petitioner for escheat 'clearly to aver a case within some act or acts of assembly'"; Escheat of \$92,800, 361 Pa. 51, 57 (1949); Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., Etc., 339 Pa. 513, 516 (1940). And the procedure provided for in the statute invoked must be pursued: Rosenfeld's Appeal, 337 Pa. 183, 187 (1940).

The petition is brought under the Act of May 2, 1889, P. L. 66, as last amended by the Act of July 29, 1953, P. L. 986. Petitioner by his petition has proceeded in accordance with the provisions of this statute. As entitling the State to escheat the moneys held by the respondent, the escheator invoked § 3 of the Act of 1889, as amended by the Act of 1953, 27 P. S. 333, defining by the amendment escheatable property, inter alia, as follows:

"Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

Are the moneys on deposit with the respondent in this State represented by unpaid money orders which have been unclaimed for more than seven years escheatable in Pennsylvania? The deposits were made in numerous localities throughout the Commonwealth, the respondent having con-[fol. 58] tracted to refund the moneys in this State to the senders if payment was not made within seventy-two hours to the payees named in the money orders.

"A legislative provision for escheat is a valid exercise of the police power of the State: \* \* \* ." The State has jurisdiction "over intangibles and \* \* \* power to subject them to escheat even as against possible non-resident owners": Philadelphia Electric Company Case, 352 Pa., 457, 463, 464 (1945).

In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), it was held that regardless of theories as to their situs, stock certificates and undelivered dividends, whose owners have been unknown or have made no claim thereon for fourteen successive years, may be escheated by the domiciliary State of the corporation (New Jersey), even as against holders of stock and dividends whose last known addresses were chiefly in other States and foreign countries.



These two cases last cited stand for the proposition that the State has power to escheat intangible property held by a corporation in the State of domicile, and emphasize the power of the State to seize ownerless property even as against possible non-resident owners. There is involved in the instant case, however, not the question of the State's jurisdiction over unclaimed property held by a corporation [fol. 59] domiciled here where possible non-residents may be affected. We are concerned in this case with the question of jurisdiction of this State over property held in the State by a corporation domiciled in another State. This proceeding involves (a) money held in Pennsylvania by the respondent, a New York corporation; (b) the depositors of money (the senders of money orders) who have made no claim for the refund of their deposits; and (c) other possible unknown claimants—payees or others who may have any interest in the uncashed money orders. Some of the payees named in the money orders were in Pennsylvania, while others were outside of this State. All the senders were in Pennsylvania.

The res involved here is the debt or demand of the State because of moneys deposited within this Commonwealth to pay money orders which have been unpaid and unclaimed. Funds are on deposit here in local banks.

In *Security Savings Bank v. State of California*, 263 U.S. 282 (1923), the Supreme Court, in dealing with the question of the right of the State of California to escheat unclaimed deposits in savings banks, stated at page 285:

"The unclaimed deposits are debts due by a California corporation with its place of business there. \* \* \* The debts arose out of contracts made and to be performed there. \* \* \* Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

We are here dealing with the seizure and forfeiture in Pennsylvania of intangible property held by a New York corporation within the dominion of this State, whereas in the *Security Savings Bank* case, the Philadelphia Electric



case, and the Standard Oil case, the courts in each instance were considering the question of the escheat of intangible property held by a corporation in its State of domicile.

We think the language of the Supreme Court in the Security Savings Bank case throws considerable light on the nature of an escheat proceeding and we quote in part therefrom at pages 286-287-288:

"The proceeding is not one in personam—at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, \* \* \* ; for confiscation, \* \* \* ; for forfeiture, \* \* \* ; for condemnation, \* \* \* ; [fol. 61] for registry of titles, \* \* \* ; and libels for possession brought by the Alien Property Custodian, \* \* \* . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard. \* \* \* There is a seizure or its equivalent. \* \* \* Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants.

"Seizure of the deposit is effected by the personal service made upon the bank. \* \* \* Thereby the res is subjected to the jurisdiction of the court. \* \* \* The fact that the claim of the State to the deposit may be defeated by the appearance of the debtor or other claimant does not, as argued, prove that the deposit was not seized."

It seems to us that the petition for escheat, when served upon the respondent, must have had the same effect as the [fol. 62] suit instituted by the Attorney General in the State of California in the Security Savings Bank case. The escheat petition is clearly directed against the funds of the defendant located within this Commonwealth. We are aware that it has been held that intangible property held by a corporation has its situs in the State of incorporation for purposes of taxation: *Commonwealth v. Schuylkill Trust Company*, 327 Pa. 127 (1937). We think the important factor in the instant case is not situs but rather the dominion of the res. The property here to be escheated—respondent's deposits in Pennsylvania banks—"is a part of the mass of property within the state whose transfer and devolution is subject to state control": *Standard Oil Co. v. New Jersey*, 341 U. S., *supra*, at 438, 441.

Escheat proceedings involve the forfeiture to the State of particular and identified ownerless property. The many statutes on the subject define and specify the particular property that is escheatable. And implicit in the decisional law on the subject we believe is the requirement that the escheator must deal with a defined res. Escheat of \$92,800, 361 Pa., *supra*; *Philadelphia Electric Company case*, 352 Pa., *supra*; *Pennsylvania Power & Light Company case*, 352 Pa. 466 (1945); *Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., etc.*, 339 Pa., *supra*; *Rosenfeld's Appeal*, 337 Pa. *supra*; *In Re Escheat of Moneys in Custody of United [fol. 63] States Treasury*, 322 Pa. 481 (1936); *Germantown Trust Co. v. Powell*, 265 Pa. 71 (1919); *Commonwealth v. Dollar Savings Bank*, 259 Pa. 138 (1917); *Alton's Estate*, 220 Pa. 258 (1908); *Cunnius v. Reading School District*, 206 Pa. 469 (1903). These are but a few of the cases dealing with the subject of escheat, but they are sufficient to show that proceedings are had against particularly identified property, frequently moneys, deposits, securities or other liquid funds.

While this case presents questions differing in some aspects from the problems decided by this Court in *Frank B. Murdoch and Leo Weinrott, Escheators of the Commonwealth of Pennsylvania v. Pennsylvania Railroad Company*, 257 Commonwealth Docket 1954 (not yet reported), Judge

Kreider's exhaustive opinion in that case interprets the Act of 1889, as amended by the Act of 1953, and should be read by all persons interested in the subject of escheat as being a comprehensive consideration not only of the application of the Act, as amended, but constitutional aspects of the statute as well.

Not only is the res involved herein within the domain of Pennsylvania, but the circumstances under which that res came into existence are of particular importance. As a matter of contract, when the deposits were made, money orders that were not cashed within seventy-two hours by the payees were to be refunded to the depositors. This was an [fol. 64] express contract which called for its execution within this State. The name and address of each sender was noted on the application form at the point where the money was sent. There were thousands of transactions involving sums in various amounts. The transactions concerning the deposits and the agreements for refund all occurred within this State. Pennsylvania's contact with these many transactions and its dominion over the funds here on deposit should entitle this State to escheat the unclaimed sums that were deposited for money orders.

Our attention has been called to a decision by the Supreme Court of the United States—*Connecticut Mutual Life Insurance Co., et al. v. Moore*, 333 U.S. 541 (1948). That case involved an interpretation of the New York Abandoned Property Law, which, *inter alia*, provided that moneys held or owing by any life insurance corporation, which shall remain unclaimed for seven years by persons entitled thereto, shall be deemed abandoned property. In a declaratory judgment proceeding, nine insurance companies, incorporated in States other than New York, sought in the Supreme Court of New York a declaration of the invalidity of the Abandoned Property Law as applied to moneys held or owed by these insurance companies. The New York Courts held such moneys to be subject to escheat. The Supreme Court of the United States, in affirming the judgment of the Court of [fol. 65] Appeals of New York, held that New York had the power to take over these abandoned moneys in the hands of the foreign insurance companies. The majority of the Court was of the view that the State of New York had such con-

tacts with the transactions involving the insurance policies in question as to entitle the State to escheat the proceeds of the policies which remained unclaimed. There were three dissents, Justices Frankfurter, Jackson and Douglas, which were occasioned in some measure at least because of the dissatisfaction of the dissenting Justices with the procedure by which the questions were brought before the Court. These dissenters felt that the general declaration of the validity of the law, and that accordingly New York had power to take over the abandoned moneys in the hands of foreign corporations, was not a sufficient answer to many of the problems that would arise under the New York law, and that, therefore, there should be no adjudication in the matter until cases were presented containing justiciable issues in a more concrete form.

We are inclined to the view that there is an issue involved here that is sufficiently defined as to satisfy the requirements of the dissenting Justices as outlined in the Connecticut Mutual Life Insurance case. And we believe also that the Connecticut Mutual case clearly establishes Pennsylvania's right to escheat in this case the funds within its jurisdiction.

[fol. 66] It should be observed that Mr. Justice Frankfurter, in the Connecticut Mutual case, stated at page 554: "For all we know there are no funds in New York to which that State could lay claim even within the circumscribed affirmance by this Court of the New York judgment." The deposit of funds within the jurisdiction of the State differentiates the instant case from the abstract declaration of law sought and obtained by the insurance companies in the Connecticut Mutual case. The funds deposited here, even though in local banks for current purposes, give this State an important contact with the ownerless property involved herein.

In our judgment, when ownerless property held by a foreign corporation is within the dominion of this State, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has had extensive contact with the transactions by which the res was created. The rationale of the decisions herein cited points to this as being the correct conclusion.

There is no constitutional objection to the escheat of the moneys held by the respondent. Most of the questions raised by the respondent as constitutional objections have been decided against the respondent in *Standard Oil Co. v. New Jersey*, 341 U.S., *supra*. The respondent has argued [fol. 67] that the statutory escheat of these moneys takes its property without due process of law because it is not protected from claims by New York and other States.<sup>1</sup> If the respondent's debt, represented by these unclaimed deposits, is taken by a valid judgment in this State, the same debts or demands against respondent cannot be taken by another State. In the *Standard Oil Company* case, at page 443, the Supreme Court said:

" . . . The Full Faith and Credit Clause bars any such double escheat. Cf. *Baltimore & Ohio R. Co. v. Hostetter*, 240 U. S. 620, 624, and cases cited, particularly *Harris v. Balk*, 198 U. S. 215, 226."

And continuing, the Court stated:

" . . . The claim of no other state to this property is before us and, of course, determination of any right of a claimant state against New Jersey for the property escheated by New Jersey must await presentation here."

It seems to us that this case affords a complete answer to the contention that New York might escheat these moneys. The claim of New York is not before us, and surely this escheat proceeding should not abate because of some claim that may or may not in the future be pre-[fol. 68] sented. When and if proceedings in this matter are brought within the jurisdiction of a higher tribunal, the claims of other States may be duly adjudicated therein.

In connection with due process, the respondent complains that the notice to any claimants was insufficient. Section 8 of the Act of 1889, as amended, 27 P. S. 48, as to notice, provides that—

<sup>1</sup> Although respondent asserted ownership of the funds in question in its answer, that position was abandoned in its brief and oral argument.

“ \* \* \* and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.”

The statute does not spell out the extent of the notice required, and in conformity with this provision in the statute the Court ordered publication one time in a newspaper of general circulation in Philadelphia, Pittsburgh and Dauphin County, all publications to be at least twenty days prior to the date fixed for hearing. We also directed that notice be published in the office of the Prothonotary of this Court.

The petition for hearing recited that—

“Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of the senders or other persons entitled thereto [fol. 69] have been unknown for more than seven years and until the present time.”

The order which the Court made with respect to notice reads as follows: .

“ \* \* \* it is ORDERED that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19 day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pitts-



burgh, such notice to be not less than twenty (20) days before the time fixed for hearing."

We call attention to the Security Savings Bank case, as well as the Standard Oil case, where notice by publication was given. And in *Anderson National Bank, et al. v. Luckett, et al.*, 321 U. S. 233 (1944) at 244, the Supreme [fol. 70] Court of the United States recognized as valid a statutory notice in an escheat proceeding which consisted of "the posting of a notice on the door of the court house in a Kentucky county"; and at page 243 the Court made this significant comment:

"The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled."

We must bear in mind also that by §22 of the Act of 1889, as amended, 27 P. S. 91, there is granted to every person without actual notice of the escheat proceedings, the right, at any time within three years after the adjudication, to traverse the adjudication by writing filed in the court which entered the adjudication and the issue thus raised must be tried in that court. In *Anderson National Bank, et al. v. Luckett, et al.*, 321 U. S., *supra*, involving the escheat of bank deposits, the Court said at page 245:

" \* \* \* The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is asserted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all [fol. 71] such proceedings the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank v. Coler*, 280 U. S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure."



And in *Mullane v. Central Hanover Bank & Trust Co., Trustee, et al.*, 339 U. S. 306 (1950), in a proceeding involving trusts, with numerous parties as possible beneficiaries whose names and interests were not known to the Trustee, the Supreme Court said at page 317:

"This Court has not hesitated to approve of resort to publication as a customary substitute \* \* \* where it is not reasonably possible or practicable to give more adequate warning."

And at page 318, the Court continued:

"Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

See also *State v. American-Hawaiian S. S. Co.*, 101 Atlantic (2d) 598 (New Jersey—1953), holding, *inter alia*, that in the absence of requisite statutory requirements to satisfy procedural due process concerning notice, the Court [fol. 72] under its inherent power could order such notice as would fulfill those requirements.

It is our conclusion, then, that there was no violation of due process in the notice that was ordered by the Court. Publication was the only practicable method by which service could be obtained as to persons who had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available.

Finally, the defendant asserts that the escheat of these moneys impairs the contract rights of the owners, and therefore violates Article I, § 10, of the Federal Constitution which provides—"No State shall \* \* \* pass any \* \* \* Law impairing the Obligation of Contracts, \* \* \* ." As we have stated, escheat statutes are enacted pursuant to the police power of the State: *Cunnius v. Reading School District*, 198 U. S. 458, 469 (1905). Again, we turn to the *Standard Oil* case as disposing of this contention. The Supreme Court commented on this point as follows at page 436:

“ \* \* \* Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor [fol. 73] and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property.”

We are not persuaded that any significance should be attached to the method by which the respondent handled the sums deposited with it. The respondent did not segregate the moneys which were deposited with it over many years. These moneys were co-mingled with other daily receipts. The surplus from these daily receipts was deposited in local banks, and from time to time excess deposits were remitted to out-of-state fiscal agents.

The parties have not seen fit to stipulate the sums of money on deposit in Pennsylvania, but that there have been funds here from time to time is shown by the stipulation, and presumably there are now funds on deposit here in connection with the extensive business carried on by the respondent in this State. Nor do we think it is significant that money orders were drawn on out-of-state depositaries for the payment of money orders. The important fact is that there are funds in Pennsylvania and these funds are subject to the dominion of this State for purposes of escheat. It would have been helpful to have had further testimony [fol. 74] concerning the extent and location of the funds in this State. Absent such evidence, however, we must rely on the agreement of the parties that funds are here in the course of respondent's business.

Under the facts in this case, we are dealing not merely with sums deposited in Pennsylvania with the respondent, but we are concerned also with deposits made with Postal Telegraph, Inc., the merged company. This fact further tends to establish Pennsylvania jurisdiction to escheat these

moneys, since Postal went out of existence leaving in Pennsylvania debts which were incurred here to unknown claimants. These debts, as we have pointed out, created the res which is essential to any escheat proceeding. It is doubtful indeed in our minds that the assumption of Postal's liability by the respondent could be considered as the res in any escheat proceeding in New York.

There has been introduced by agreement Commonwealth's Exhibit No. 4 which contains schedules of unpaid money orders. Included in the schedules in this exhibit is Schedule "C" which relates to money orders originating outside of the State and sent to destinations in Pennsylvania. We have not considered this schedule in any way. It is not included within the averments of the petition for escheat. Although we do not decide the matter now, there is a serious doubt in our mind as to whether we have [fol. 75] dominion over the accounts created out of the State in this manner and referred to in Schedule "C" of Commonwealth's Exhibit No. 4.

There is one item of which we should take note. It is set forth that \$725.85 has already been escheated to New York and payment of that amount has been made. We take this opportunity of stating that we do not recognize New York's authority to escheat that money, but since it has been done we have no jurisdiction over this sum.

We, therefore, adjudge that the sums deposited at points in Pennsylvania for the purchase of money orders which were never paid to the payees at the points of destination are escheatable regardless of whether those points of destination were within or without the State of Pennsylvania. In view of the foregoing, we make the following

#### CONCLUSION OF LAW

1. The sum of \$45,513.99 now held by the respondent is escheatable in Pennsylvania.

#### DECREE

And Now, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in favor of the escheator and against the respondent in the sum of

\$45,513.99, unless exceptions are filed hereto within thirty (30) days.

William H. Neely, J.

[fol. 76]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

DEFENDANT'S EXCEPTIONS—Filed January 10, 1959

The defendant excepts to the Findings of Fact, Conclusions of Law and the Decree nisi, as set forth in the Opinion dated December 15, 1958, as follows:

1. Defendant excepts to the Court's 2nd Finding of Fact, which is as follows:

"2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania."

2. Defendant excepts to the Court's 5th Finding of Fact, which is as follows: "

"5. Each sender deposited moneys with the understanding that the respondent would transmit a telegraphic communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee."

3. Defendant excepts to the Court's 6th Finding of Fact, which is as follows:

"6. Prior to December 31, 1946, a total of \$6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

[fol. 77] 4. Defendant excepts to the Court's 7th Finding of Fact, which is as follows:

"7. Prior to December 31, 1946, a total of \$615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph, Inc., to be transmitted to Pennsyl-

vania destinations and has been unpaid as well as unclaimed."

5. Defendant excepts to the Court's 9th Finding of Fact, which is as follows:

"9. The total sums transmitted prior to December 31, 1946 by the Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,755.49, all of which is unclaimed."

6. Defendant excepts to the Court's 10th Finding of Fact, which is as follows:

"10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of \$31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed."

7. Defendant excepts to the Court's 11th Finding of Fact, which is as follows:

[fol. 78] "11. Prior to December 31, 1946, there was deposited with Postal Telegraph, Inc., the sum of \$2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed."

8. Defendant excepts to the Court's 12th Finding of Fact, which is as follows:

"12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to \$33,853.82, all of which is unclaimed."

9. Defendant excepts to the Court's 13th Finding of Fact, which is as follows:

"13. From January 1, 1947 to December 31, 1948, money orders totaling \$1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to payees at destinations in Pennsylvania, and \$4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed."

10. Defendant excepts to the Court's 19th Finding of Fact, which is as follows:

"19. The respondent contracted with persons purchasing money orders that if payment was not made [fol. 79] to the payees at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded."

11. Defendant excepts to the Court's 20th Finding of Fact, which is as follows:

"20. Such refunds were to be made at the point of origin, i. e., the point where the senders purchased the money orders in Pennsylvania."

12. Defendant excepts to the Court's 21st Finding of Fact, which is as follows:

"21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed."

13. Defendant excepts to the 1st Conclusion of Law, which is as follows:

"1. The sum of \$45,513.99 now held by the respondent is escheatable in Pennsylvania."

14. Defendant excepts to the Decree, which reads as follows:

"AND NOW, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in [fol. 80] favor of the escheator and against the respondent in the sum of \$45,513.99, unless exceptions are filed hereto within thirty (30) days."

Respectfully submitted,

Rex Rowland, Buchanan, Ingersoll, Rodewald, Kyle  
& Buerger, 1301 Alcoa Building, Pittsburgh 19,  
Pennsylvania.

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

OPINION—Filed July 6, 1959

By the Court:

The respondent has filed fourteen exceptions to this Court's opinion of December 15, 1958. Exceptions one through eleven relate to the nature of the money order transactions as characterized by the Court in certain Findings of Fact. Exception twelve relates to our finding as to the total amount of unpaid money orders which the Court found to be \$46,239.84. The thirteenth exception is to our first Conclusion of Law that \$45,513.99 is escheatable by the respondent in Pennsylvania, and the fourteenth exception is to the decree of the Court which directed judgment of escheat to be entered in this latter amount.

The respondent argues that " \* \* \* the Court finds that senders 'deposited' money in the offices of the Respondent in Pennsylvania"; that "these sums were to be 'trans-[fol. 81] mitted', 'forwarded', 'paid', or 'delivered' to payees"; and contends that "These Findings, \* \* \* describe the money order transaction as being one consisting of the deposit of money and the transmittal or delivery of that money"; and further contends that "This is not in accord with the facts of record."

The Court in its Findings has merely described the money order transactions in the same manner as did the



respondent by its own rules and regulations, its transmittal forms, its applications for money orders, and in other documents, all of which were offered by the respondent as exhibits and admitted into the record in this case. A limited reference to some of the language used in the respondent's exhibits supports the Court's Findings with respect to the nature and character of these transactions.

There were admitted in evidence (respondent's Exhibits Nos. 2 to 8 inclusive) respondent's regulations governing its telegraphic money order service as filed with certain governmental agencies. Respondent's Exhibit No. 2 states that these regulations are " \* \* \* instructions \* \* \* for the information and guidance of the employees and agents of this company in the acceptance, transmission and payment of Money Transfers." This Exhibit sets forth, inter alia, the charges for transfer of money. For example, it provides that "The transfer charges for a transfer of \$125.00 will be 85¢. for \$100.00, plus 25¢. for the additional \$25.00, total \$1.10."

[fol. 82] Exhibit No. 3 refers to "Money for transfer to another point." This same Exhibit, after detailing the transfer charge for specified sums of money, sets forth an additional charge for transmitting messages. The Exhibit provides that "The word 'sender' indicates the person sending the transfer and the word 'payee' the person to whom the money is to be paid." The same Exhibit also provides that "If cash is desired the payee of a transfer, or the sender in case of a refund, will be required to sign the back of the draft." The same Exhibit contains a sample money transfer application form which says: "Amount of transfer principal expressed in words and written out in full." Such amount of transfer principal can amount to nothing more than a deposit of money as characterized by the Court in its opinion, which money was deposited for transfer to the payee at the designated destination. Exhibit No. 4 contains a similar sample money transfer form and also other language similar to that already mentioned in other Exhibits.

Exhibit No. 5 contains the following sample form "Refund Notice":

"Buffalo, N. Y., Sept. 4, 1925

To Richard Brown  
7th & Walnut Sts.

The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our [fol. 83] office at 5 South Division St., it will be refunded upon presentation of satisfactory evidence of identity."

Thus, the respondent in its own refund notice makes reference to the deposit of moneys for transmission.

Exhibit No. 6 contains a number of specimen forms, including a transmittal form for delivery of a draft or supplemental message, or both, which states: "The Money Order paid you herewith is from William J Smith at Philadelphia Penn"—with a supplemental message. The same Exhibit contains a specimen "Caution" order which says: "We have received a telegraphic money order for you \* \* \*." There is another form "Notice To Sender Of Undelivered Money Order" which provides: "Your money order of \* \* \* cannot be paid \* \* \*. The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime."

Exhibit No. 7 contains this notation: "In the case of a foreign order the foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer"; and also contains the provision that "The amount of the order must be written out in words in the proper place on the application form."

Exhibit No. 8 provides as follows:

"Money orders that remain unpaid at the expiration of seventy-two hours from receipt, exclusive of Sundays [fol. 84] and holidays, shall be cancelled \* \* \* and the originating office so notified by service message, stating the reasons for cancellation."

We have by no means exhausted the pertinent language of the numerous Exhibits. That which we have quoted is

clearly sufficient to support our conclusion that the Court has properly characterized the transactions in question in the Findings of Fact which are the subject of the respondent's first eleven exceptions.

The respondent complains that some implication of a trust relationship arises in these money order transactions as described by the Court in its Findings of Fact. The Court by its Findings does not intend to make any implication as to whether the money order transactions created a trust relationship or a debtor-creditor relationship. It was not essential to the Court's disposition of this case to determine this relationship since in our view we would have reached the same result regardless of the relationship.

It was agreed in paragraph nineteen of the stipulation of facts that two items totaling \$25.72 have been paid and are not therefore involved in this proceeding. Findings of Fact Nos. 6 and 9, therefore, should each be reduced in the amount of \$25.72. Finding of Fact No. 6 should read:

"6. Prior to December 31, 1946, a total of \$6,113.96 (Commonwealth's Exhibit No. 4) was deposited with [fol. 85] The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

And Finding of Fact No. 9 should read as follows:

"9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,729.77, all of which is unclaimed."

Both parties agree that unpaid money orders between January 1, 1947 and December 31, 1948 in Schedules A and B on the first page of Commonwealth's Exhibit No. 4, totaling \$5,630.53, should be eliminated from this case. This is pursuant to the stipulation mentioned on page eight of the notes of testimony. And both sides have agreed that the sums referred to in Finding of Fact No. 13 in that total amount should be eliminated from this case.

There should then be eliminated from further consideration the item of \$25.72 mentioned in Findings 6 and 9. And there should also be eliminated the sum of \$5,630.53 mentioned in Finding 13. Finding of Fact 21, then, instead of being \$46,239.84, should reflect the deduction of the two items above mentioned totaling \$5,656.25, and that Finding then should read as follows:

[fol. 86] "21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$40,583.59 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed."

The Court's first Conclusion of Law should read as follows:

"1. The sum of \$39,857.74 now held by the respondent is escheatable in Pennsylvania."

In answer to the respondent's fourteenth exception, we take occasion to point out that the amount for which judgment of escheat shall be entered is \$39,857.74. Both parties have in their briefs and at the oral argument of respondent's exceptions stated that the Findings should be modified to the extent hereinabove set forth.<sup>1</sup>

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<sup>1</sup> In its brief in support of its exceptions to Findings of Fact and Conclusions of Law, the respondent makes the following statement:

"In paragraph 19 of the Stipulation of Facts it was stipulated that two items appearing in Schedule A of Exhibit A, totaling \$25.72, have been paid since the date of the compilation of the exhibit. Therefore, the total amounts stated in Findings of Fact 6 and 9 should be reduced by \$25.72, so that these total amounts are, respectively, \$6,113.96 and \$6,729.77.

"At the time of the hearing in this case it was stipulated that money orders for the period January 1, 1947, to December 31, 1948, (see page 8 of the notes of testimony), were eliminated from the case, for the reason that since Petitioner had not filed with the Prothonotary the exhibits listing these transactions there could be no notice as to them. The amounts set

[fol. 87] We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent reargued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage in the proceedings. However, we have reconsidered all of the respondent's rearguments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958. We find no occasion to depart from the disposition which we have already made of the respondent's contentions. All of them are fully considered in the Court's opinion of December 15th. In view of the foregoing, we herewith enter the following

[fol. 88]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

FINAL DECREE—July 6, 1959

And Now, July 6, 1959, respondent's exceptions Nos. 1, 2, 4, 6, 7, 8, 10, 11 and 14 are herewith overruled. Findings of Fact Nos. 6, 9, 13 and 21 (exceptions Nos. 3, 5, 9 and

---

forth in Finding of Fact 13; therefore, totaling \$5,630.53, should be eliminated.

"In order to reflect the above eliminations, Finding of Fact 21 should be reduced by the amount of \$5,656.25, so that the amount appearing in Finding of Fact 21 should be \$40,583.59 instead of \$46,239.84. Likewise, in order to reflect these eliminations in the figure in the Conclusion of Law and in the Decree at page 18 of the Court's Opinion, the figure should be \$39,857.74 instead of \$45,513.99." (parentheses supplied)

The petitioner in his brief contra the respondent's exceptions states:

"The respondent has correctly stated that certain items have been eliminated from this case by Stipulation of Counsel, and that the amounts set forth in the Findings of Fact should be reduced; and that, accordingly, the amount appearing in Finding of Fact No. 21 should be \$40,583.59, and the amount in the Conclusion of Law and in the Decree, at page 18, should be \$39,857.74."

12), and the Court's first Conclusion of Law (exception No. 13) are herewith modified as herein set forth. It is directed that judgment of escheat be entered in favor of the escheator and against The Western Union Telegraph Company in the sum of \$39,857.74.

William H. Neely, J.

[fol. 89]

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY, PENNSYLVANIA

EXHIBIT A

(Because of its bulk, only the first two pages of  
Exhibit A have been printed.)

THE WESTERN UNION TELEGRAPH COMPANY  
State of Pennsylvania—Escheat Proceeding

Record of Unpaid Money Orders—

To December 31, 1946

SUMMARY

Schedule A (Intrastate Orders)	Western Union	\$ 6,139.68
	Postal	\$ 615.81
Total:		<u>\$ 6,755.49</u>
Schedule B (Destined Elsewhere)	Western Union	\$31,547.97
	Postal	\$ 2,305.85
Total:		<u>\$33,853.82</u>
Schedule C (Originating Else- where)	Western Union	\$21,976.17
	Postal	\$ 1,614.31
Total:		<u>\$23,590.48</u>
Grand Total:		<u><u>\$64,199.79</u></u>
Schedule D (Items paid to New York State)		<u>\$ 725.85</u>
Schedule E (Items reported but not paid to New York State)		<u>\$ 3,089.05</u>

[fol. 90]

## EXPLANATORY NOTES

Records available from which details supporting Schedules A, B, C, D, and E procured.

Area	Ledger Records	Money Order Applications
Eastern Division	From January 1916	From December 1941
Southern Division	From January 1923	From March 1941
Lake Division	From January 1916	From January 1934
Gulf Division	From January 1916	From April 1940
Pacific Division	From January 1916	From January 1930
(X) Central Division	Period Jan. 1917-Nov. 1939	Period Jan. 1935-Nov. 1939
(X) Mountain Division	Period Jan. 1923-July 1938	None
(X) Postal Telegraph Co.	Period Jan. 1930-Oct. 1943	Period Jan. 1930-Oct. 1943

Note: Central and Mountain Divisions merged with other Divisions. Postal Telegraph Company merged with Western Union.

Ledger records do not provide for sender's name or address or address of payee other than city and state. An exception is Pacific Division record period July, 1919, through August, 1923, which shows sender's name.

Ledger records prior to August, 1925 for Eastern, Southern, Lake, Gulf and Mountain Divisions; September, 1925 for Pacific and March, 1926 for Central Division make [fol. 91] no provision for recording of draft numbers issued or indication whether or not draft was issued.

Money order applications available as shown above were used in conjunction with the ledger records and complete details have been recorded on Schedules A, B, C, D and E to the extent available.



[fol. 89a]

EXHIBIT A, Pages 97-98

RECORD OF UNPAID MONEY ORDERS FOR THE YEAR 1946,  
ORIGINATING IN PENNSYLVANIA AND DESTINED TO NEW YORK

[fol. 89b]

Date of Order	Amt. of Principal	Point of Origin	Point of Destination	Name & Address of Payee	Name & Address of Sender	Indication If Draft Issued to Sender Instead of Payee	Draft Nbr. X if Not Issued
1- 7-46	10.00	Sharon	Buffalo	N L Hubbard	Mrs. N. L. Hubbard 235 N Tupper		X
3- 2-46	100.00	Phila	New York	Robert V Heenle 44th & Broadway	Girard Trust Co. Broad & Chestnut St		Issued-Nbr Unknown
3- 6-46	3.00	Lane	New York	Hotel Theresa Mgr 125th St & 7th Ave	H N Ewell 341 Locust		616178
3- 7-46	1.00	Pittsburgh	New York	Mrs Joyce Barbeb 16 E 95th St	K Gaceco 1629 5th St		632591
5-11-46	5.00	York	New York	K F Sexton 4611 Park Ave	E R Dillion Colonial Hotel		734274
5-11-56	10.00	Pittsburgh	Buffalo	Mrs Mary Cristiano 513 Cambridge Ave	C Cristiano 6419 Stanton Ave		X
6- 3-46	5.00	Pittsburgh	New York	Gramercy Hotel 21st & Lexington Av	Mrs Melvin Singer 1208 Cheslitt St		774483

Date of Order	Amt. of Principal	Point of Origin	Point of Destination	Name & Address of Payee	Name & Address of Sender	Indication If Draft Issued to Sender Instead of Payee	Draft Nbr. X if Not Issued
6-15-46	5.00	Phila	New York	Hotel Wellington 55th & Seventh Ave	P E Brown 7013 Greene St		028149
6-28-46	5.00	Monessen	New York	Miss Edith Martin 262 W 70th St	T A Manguso 1012 Morgan Ave		044457
7- 2-46	12.00	Pittsburgh	New York	Merrill Banbs 1398 Fulton Ave	E Palmer 1108 Etting St		058931
7- 8-46	1.00	Phila	New York	Jewish Mission 77 Bowery	E Noaler 603 Poplar St		061102
9-10-46	2.00	Coatsville	New York	Magistrates Court 14th Precinct	G Baxter 793 Solst Ave		011520
10-23-46	4.50	Allentown	New York	Miss R Wood 609 W 191st St	L Saropoulos 742 Main St		333461
10-29-46	5.00	Phila	Brooklyn	Grady Jones 831 Greene Ave	C Jones 2535 Oakford St		437981
11- 6-46	5.00	Phila	New York	R E Austin	J Wyeth 1708 Arch St		X
11- 6-46	1.00	Scranton	New York	Mr/Mrs H Bassoff Hotel Commodore	Ruth & Arthur 211 N Wash		X
11-20-46	15.00	Pittsburgh	Rochester	Miss Mary Gillotte			68085
11-23-46	4.00	Pittsburgh	Brooklyn	Mrs L E Jones 804 Gates Ave	Aunt		477553
12-27-46	5.00	Phila	Brooklyn	M Sadler 371 Cumberland St	L Sadler 1229 N 57th St		128982

[fol. 91]

EXHIBIT D-1

Excerpt, Book of Rules of December 1, 1916

Payments to Payee, Sender or Bank.

All payments will be made by draft on the Fiscal Agent (the Treasurer acting as Fiscal Agent for the Eastern Division), Form 2738, in favor of the payee of the transfer, sender (in case of refund), BA station or Forwarding Bank. Payments at BA and BNK stations will be made by the Bank. Branch offices will enter their office call as a prefix to the number of the draft. Drafts for refund will show the date of the transfer and place originally payable, in addition to the other information provided for. Drafts covering payments to Forwarding Bank should bear the notation, "For (name of payee) at (Town in which payee is located.)"

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[fol. 92]

EXHIBIT D-2

Excerpt, Book of Rules of October 1, 1918

Payments to Payee, Sender or Bank.

All payments will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refund), BA station or Forwarding Bank. Payments at BA and BNK stations will be made by the Bank. Branch offices will enter their office call as a prefix to the number of the draft. Drafts for refund will show the date of the transfer and place originally payable, in addition to the other information provided for. Drafts covering payments to Forwarding Bank should bear the notation, "For (name of payee) at (Town in which payee is located.)"

**EXHIBIT D-3**

**Excerpt, Book of Rules of February 1, 1920**

**Payments to Payee, Sender or Bank.**

132. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refunds), "BA" station or Forwarding Bank. Payments at "BA" and "BNK" stations will be made by the Bank. When [fol. 93] a transfer, payable at a "BA" or "BNK" station, reaches an agency office after banking hours, or on Sundays or holidays, the draft may be mailed directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result.

138. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash, if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall be endorsing draft and by other proper means assist payee to secure cash.

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**EXHIBIT D-4**

**Excerpt, Book of Rules of February 1, 1923**

**Payments to Payee, Sender or Bank.**

135. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of [fol. 94] the payee of the transfer, sender (in case of refund), "BA" station or Forwarding Bank. Payments at "BA" and "BNK" stations will be made by the Bank. When a transfer, payable at a "BA" or "BNK" station, reaches an agency office after banking hours, or on Sundays, or holidays, the draft may be mailed

directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result. Transfer agents should set up a record for their own use of the hours of payment at the "BA" stations in their agency.

141. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash, if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall by endorsing draft and by other proper means assist payee to secure cash.

[fol. 95]

#### EXHIBIT D-5

Excerpt, Book of Rules of February 1, 1926

##### Payments to Payee, Sender or Bank

148. Payment of all transfers will be made by draft, Form 2738, on the Division Fiscal Agency in favor of the payee of the transfer, sender (in case of refund), "BA" agency or Forwarding Bank. Payments at "BA" agencies and "BNK" stations will be made by the Bank. When a transfer, payable at a "BA" agency or "BNK" station, reaches an agency office after banking hours, or on Sundays or holidays, the draft may be mailed directly to the payee rather than forwarded through the bank, if in the judgment of the transfer agent no delay or other impairment of the service will result. Transfer agents should set up a record for their own use of the hours of payment at the "BA" agencies in their agency.

154. It is the clear intent of the sender that the payee shall receive the amount of the transfer in cash,

if cash is preferred, without delay or trouble. Therefore the draft drawn in favor of the payee, after endorsement by him and upon proper identification, will be cashed by the Transfer Agent, unless the payee otherwise requests. It is incumbent on Transfer Agents [fol. 96] to provide themselves with funds for such cash payments. If for any reason funds cannot be made available, Transfer Agents shall by endorsing draft and by other proper means assist payee to secure cash.

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#### EXHIBIT D-6

Excerpt, Book of Rules of April, 1934:

##### Delivery of Money Orders:

117. While the telegraph company's obligation is to pay money orders in cash, cash payments must necessarily be confined to those made over the counter. However, money order drafts may be delivered in all instances where this will tend to make the service more attractive and when the circumstances are such that delivery of drafts can safely be made. Drafts in payment of vigilant money orders shall not be delivered except as provided in the following paragraph.

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[fols. 97, 98]

#### EXHIBIT D-7

Excerpt from Tariff on file with the Federal Communication Commission effective January 23, 1939.

(4) *Payment of Money Orders*: Payment of money orders at the Telegraph Company's paying offices is accomplished by delivering a money order draft by messenger to payees who are known to the local office, or by notifying payees to call at the telegraph office, bringing suitable evidence of their identity, to receive the money. Payees of orders payable through banks or agencies are notified by telephone, messenger or mail to call for the money.

[fols. 99-102]

## DEFENDANT'S EXHIBIT 3

SAMPLE MONEY TRANSFER APPLICATIONS FORM 7.  
 FILLED IN TO ILLUSTRATE THE CORRECT PREPARATION OF THE FORMS

1

FOR A CAUTION TRANSFER

**WESTERN UNION**  
**MONEY TRANSFER**

TO THE ORDER OF ASHFORD, PA.

TO THE ORDER OF C. A. Glass  
Trifton, Pa.

One hundred eighty -

A. C. Beas  
619 South Ave

A. C. Beas

118.00  
 1.00  
 1.00  
 1.00  
 1.00

124.00

2

FOR A VIGILANT TRANSFER

**WESTERN UNION**  
**MONEY TRANSFER**

TO THE ORDER OF ASHFORD, PA.

TO THE ORDER OF J. B. Seaborn & Co  
136 West St  
Asbury, Pa.

J. B. Seaborn  
100 Main St

25.00  
 2.00  
 1.00  
 1.00

30.00



[fols. 103, 104]

# MONEY TRANSFER DRAFTS—FORM 2738

FILLED IN TO ILLUSTRATE THE CORRECT PREPARATION OF THE FORMS

## REGULAR MONEY TRANSFER DRAFT

1549961	BISCAY, ME.	Jan 14 1922
PAY TO THE ORDER OF <i>R. A. Seaford &amp; Co</i>		
<i>Twenty five and 10/100</i>		DOLLARS <i>25.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Baldwin</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

## CORRECT FORM OF DRAFT FOR REFUNDED MONEY TRANSFER

1549962	ASHFORD, PA.	Jan 14 1922
PAY TO THE ORDER OF <i>M. V. White</i>		
<i>Fifteen and 10/100</i>		DOLLARS <i>15.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
Refund application to <i>H. W. Harrison</i>		
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Harrison</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

## CORRECT FORM OF DRAFT TO BE PAID AT "BNN" POINT

1549963	BISCAY, ME.	Jan 14 1922
PAY TO THE ORDER OF <i>First National Bank</i>		
<i>One hundred eighteen and 10/100</i>		DOLLARS <i>118.00</i>
AMOUNT DEPOSITED FOR TRANSFER AT <i>Ashford, Pa.</i>		Jan 14 1922
For <i>C. H. Glace at <del>Seaford, Me.</del></i>		
TO THE LIBERTY NATIONAL BANK OF NEW YORK		
THE WESTERN UNION TELEGRAPH COMPANY		
<i>H. W. Baldwin</i>		

PLEASE REPORT ON EACH THIS DRAFT AT ONCE.

MONEY TRANSFER DRAFTS - FORM 2738

Filled in to illustrate the correct preparation of the forms

REGULAR MONEY TRANSFER DRAFT

Form 2738 E

NO **C 579301** Biscay, Maine December 14, 1922  
(CITY AND STATE) (DATE)

PAY TO THE ORDER OF R. B. Seabring & Co.

Twenty-five and no /100-----DOLLARS 25.00  
100

AMOUNT DEPOSITED FOR TRANSFER AT Ashford, Pa. December 14, 1922  
(ORIGINATING POINT) (DATE)

THE WESTERN UNION TELEGRAPH COMPANY

To THE CHASE NATIONAL BANK 1-74  
NEW YORK, N. Y.

H. W. Baldwin  
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

[fol. 105, 106]

DEFENDANT'S EXHIBIT 4

[fols. 107, 108]

CORRECT FORM OF DRAFT FOR REFUNDED MONEY TRANSFER

NO. <b>C 579302</b>	<b>Ashford, Pa.</b> <small>(CITY AND STATE)</small>	<b>December 14,</b> <small>(DATE)</small>	Form 2734 E 1922
PAY TO THE ORDER OF <b>M. V. White</b>			
<b>Fifteen and no/100</b>		DOLLARS.	<b>15<sup>00</sup>/<sub>100</sub></b>
AMOUNT DEPOSITED FOR TRANSFER AT	<b>Ashford, Pa.</b> <small>(ORIGINATING POINT)</small>	<b>December 14,</b> <small>(DATE)</small>	1922
Refund application #16 to Biacay, Me. To THE CHASE NATIONAL BANK 1-74 NEW YORK, N. Y.		THE WESTERN UNION TELEGRAPH COMPANY <i>J. W. Harrison</i> <small>TRANSFER AGENT</small>	
PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE			

CORRECT FORM OF DRAFT TO BE PAID AT "BNK" POINT

NO. <b>C 579303</b>	<b>Biacay, Maine</b> <small>(CITY AND STATE)</small>	<b>December 14,</b> <small>(DATE)</small>	Form 2734 E 1922
PAY TO THE ORDER OF <b>First National Bank</b>			
<b>One Hundred Eighteen and 55/100</b>		DOLLARS.	<b>118<sup>55</sup>/<sub>100</sub></b>
AMOUNT DEPOSITED FOR TRANSFER AT	<b>Ashford, Pa.</b> <small>(ORIGINATING POINT)</small>	<b>December 14,</b> <small>(DATE)</small>	1922
For C. H. Black at Grafton, Me. To THE CHASE NATIONAL BANK 1-74 NEW YORK, N. Y.		THE WESTERN UNION TELEGRAPH COMPANY <i>H. W. Baldwin</i> <small>TRANSFER AGENT</small>	
PLEASE ENDORSE THIS DRAFT BY SIGNING ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE			

[fols. 109, 110]

**DEFENDANT'S EXHIBIT 5**  
**MONEY TRANSFER APPLICATION FORM 72-F**

For only a few cents more, you can send a message with the money, saving the cost of a separate message

Form 77F

Number	1
Time Filed	9 am
Received By	8
Sent By	A

# WESTERN UNION

## MONEY TRANSFER

NEWCOMB CARLTON, PRESIDENT

J. C. WILLEVER, FIRST VICE-PRESIDENT

Principal	\$ 100.00
Transfer Charges	85
Telegraph Tolls	67
Tax	—
Total Charges	\$ 101.52

THE WESTERN UNION TELEGRAPH COMPANY:

Subject to the conditions below and on back hereof, which are hereby agreed to,

Buffalo N.Y. Sept 1, 1925

PAY TO

*John Smith*

If to a woman give prefix Mrs or Miss, if practicable

Street and No.

*913 Franklin St.*

Place

*Pittsburg, Pa*

(Amount)

*One hundred*

Dollars and

*no*Cents \$ *100.00*

And DELIVER the following message to payee at the time of payment:

*Will meet you at Dallas Sept tenth*

Positive evidence of personal identity is NOT to be required from the Payee, and I authorize and direct the Telegraph Company to pay the sum named in this order at my risk to such person as its agent believes to be the above named Payee, UNLESS the following is signed

**POSITIVE PERSONAL IDENTIFICATION REQUIRED**

I declare that the above named payee shall be required to produce positive evidence of personal identity before payment is made

Signature

*Richard Brown*

Sender's Address

*7th & Walnut Sts*

TRANSFER AGENT'S COPY—NOT FOR TRANSMISSION

[fols. 111, 112]

## FORM 73, SENDER'S RECEIPT

MONEY TRANSFER SERVICE SENDER'S RECEIPT	Form 73
	<p style="text-align: center;"><b>THE WESTERN UNION TELEGRAPH COMPANY</b></p> <p>PLACE <u>Buffalo, N. Y.</u> DATE <u>Sept. 1/25</u></p> <p>RECEIVED FROM <u>Richard Brown</u></p> <p><u>One Hundred and <sup>no</sup> 100</u> DOLLARS, TO BE PAID TO  <u>John Smith</u> AT <u>Pittsburgh, Pa.</u></p> <p style="text-align: center;">. SUBJECT TO THE TERMS AND CONDI-          TIONS OF MONEY TRANSFER ORDER OF THIS DATE.</p> <p style="text-align: right;"><u>H. D. Roe</u>  <small>TRANSFER AGENT</small></p> <p>CHARGES PAID \$ <u>1.52</u></p>

The company having no disbursing office at the point to which this transfer is directed, payment will necessarily be made through a local bank or a nearby money transfer office. The transfer is therefore subject to such delay as such method of payment may involve.

[fols. 113, 114]

NOTICE TO PAYEE OF A CAUTION TRANSFER - FORM 75-C

Form 75-C

Quick Service

# WESTERN UNION



# MONEY TRANSFER

Low Rates

MONEY TRANSFERRED BY TELEGRAPH AND CABLE TO ALL THE WORLD  
 NEWCOMB CARLTON, PRESIDENT J. C. WILLEVER, FIRST VICE-PRESIDENT

Pittsburgh, Pa. Sept. 1, 1925

To John Smith

913 Franklin St.

We have received a sum of money by telegraph for you and the sender says:

I'll meet you at Dallas Sept. tenth.

Will you please call at our office, 110 Smithfield St. to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

Membership cards  
 Receipted bills  
 Letters addressed to you

Bank book  
 Automobile license  
 Western Union collect card

or any other documentary evidence you may have.

BRING THIS NOTICE WITH YOU

THE WESTERN UNION TELEGRAPH COMPANY

Do not use this form for a VIGILANT transfer - See form 75-v.

[15, 116]

Form 2754 F

# WESTERN UNION MONEY TRANSFER

NO. **G883803** → **Pittsburgh, Pa.** **September 1,** 192**5**

PAY TO THE ORDER OF **Wells Fargo Bank**

One hundred and 43/100-----DOLLARS **100 <sup>43</sup>/<sub>100</sub>**

AMOUNT DEPOSITED FOR TRANSFER AT **Buffalo, N. Y.** **September 1,** 192**5**

For John Smith at Bolivar, Ohio.

**THE CHASE NATIONAL BANK 1-74**  
**NEW YORK, N. Y.**

**THE WESTERN UNION TELEGRAPH COMPANY**  
*J. J. Hoe*  
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

DRAFT OF ORIGINATING OFFICE COVERING REFUND OF TRANSFER TO SENDER

[17, 118]

Form 2754 F

# WESTERN UNION MONEY TRANSFER

NO. **G883802** → **Buffalo, N. Y.** **September 4** 192**5**

PAY TO THE ORDER OF **Richard Brown**

One hundred and no/100-----DOLLARS **100 <sup>00</sup>/<sub>100</sub>**

AMOUNT DEPOSITED FOR TRANSFER AT **Buffalo, N. Y.** **September 1** 192**5**

Refund transfer \$1 to Pittsburgh, Pa.  
TO **THE CHASE NATIONAL BANK 1-74**  
**NEW YORK, N. Y.**

**THE WESTERN UNION TELEGRAPH COMPANY**  
*H. J. Roe*  
TRANSFER AGENT

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE



Form 2738 B

## WESTERN UNION MONEY TRANSFER

NO. **G 883801**      **Pittsburgh, Pa.**      **September 1** 19**25**

PAY TO THE ORDER OF **John Smith**

**One hundred and no /100**----- DOLLARS **100.00**  
~~100~~

AMOUNT DEPOSITED FOR TRANSFER AT      **Buffalo, N.Y.**      **September 1** 19**25**

**THE CHASE NATIONAL BANK 1-74**  
**NEW YORK, N. Y.**

**THE WESTERN UNION TELEGRAPH COMPANY**

*John Doe*  
 (TRANSFER AGENT)

PLEASE ENDORSE THIS DRAFT ON THE BACK HEREOF AND DEPOSIT OR CASH AT ONCE

THIS is a draft  
 drawn by the  
 Western Union  
 on its own funds  
 in its own bank.  
 It can be cashed  
 through any per-  
 son or concern to  
 whom the payee  
 is known.

FIG. 1—MONEY ORDER APPLICATION—FORM 72-H

[fol. 121, 122]

DEPENDANT'S EXHIBIT 6

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>NO.</td></tr> <tr><td>TIME FILED <i>1036 AM</i></td></tr> <tr><td>RECEIVED BY <i>E</i></td></tr> <tr><td>SENT BY <i>R</i></td></tr> </table>	NO.	TIME FILED <i>1036 AM</i>	RECEIVED BY <i>E</i>	SENT BY <i>R</i>	<h1 style="margin: 0;">WESTERN UNION</h1> <h1 style="margin: 0;">MONEY ORDER</h1>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>AMOUNT <i>87.00</i></td></tr> <tr><td>MONEY ORDER CHARGE <i>85</i></td></tr> <tr><td>TELEGRAPH TOLLS <i>70</i></td></tr> <tr><td>TOTAL <i>88.55</i></td></tr> </table>	AMOUNT <i>87.00</i>	MONEY ORDER CHARGE <i>85</i>	TELEGRAPH TOLLS <i>70</i>	TOTAL <i>88.55</i>
NO.										
TIME FILED <i>1036 AM</i>										
RECEIVED BY <i>E</i>										
SENT BY <i>R</i>										
AMOUNT <i>87.00</i>										
MONEY ORDER CHARGE <i>85</i>										
TELEGRAPH TOLLS <i>70</i>										
TOTAL <i>88.55</i>										
Subject to the conditions below and on back hereof, which are hereby agreed to.										
PAY TO <i>Miss Marion Smith</i> <span style="float: right;"><i>Philadelphia Pa Sept 4 1933</i></span>										
Street Address <i>278 East Liberty St</i>										
Place <i>Pittsburgh Pa</i>										
Amount <i>Eighty seven</i> Dollars and <i>70</i> Cents ( <i>87.00</i> )										
(A message, to be delivered with the money, costs but a little more and saves a separate telegram. It may be written on the following lines.)										
Message to be delivered with the money: <i>Glad you can take vacation now.</i>										
Positive evidence of personal identity is NOT to be required from the Payee, and I authorize and direct the Telegraph Company to pay the sum named in this order at my risk to such person as the agent believes to be the above named Payee, UNLESS the following is signed.										
Signature <i>William J. Smith</i>										
Sender's Address <i>509 So 4th St</i>										
Sender's Telephone Number <i>Grogan 2-9364</i>										
*Information for test question for identifying payee: <i>Mother's maiden name Nelson</i>										
IN CASE OF FOREIGN MONEY ORDERS: Pay United States Dollars <input type="checkbox"/> Pay in Local Currency <input type="checkbox"/>										

[fols. 123, 124]

FIG. 2—SENDER'S RECEIPT—FORM 73

FORM 73

Receipt for Telegraphic Money Order

*WX-Philadelphia, Pa. Sept 4 1933*

Received from *William J. Smith*

*Eighty seven and no/100* Dollars, to be paid

to *Miss Marion Smith* at *Pittsburgh, Pa.*

subject to the terms and conditions of the Money Order Service

THE WESTERN UNION TELEGRAPH COMPANY

Charges Paid *\$1.55*

*J. R. James*  
MONEY ORDER AGENT

FIG. 3—STICKER FORM 3870

The company having no disbursing office at the point to which this money order is directed, payment will necessarily be made through a local bank or a nearby money order office. The money order is therefore subject to such delay as such method of payment may involve.

3870

FIG. 5  
STICKER—FORM 3300C

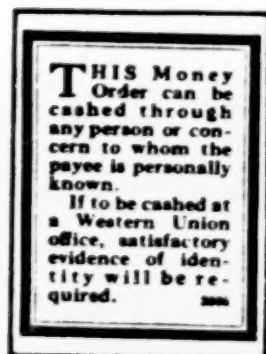


FIG. 4.—MONEY ORDER DRAFT—FORM 2738

No <b>D 11544</b>		<b>WESTERN UNION MONEY ORDER</b>	
<i>When Countersigned</i> at Point of Issue		ISSUED AT EL- <b>PITTSBURGH PENN</b>	<b>SEPT 4TH 1933</b>
PAY TO <b>MISS MARION SMITH</b>		OR ORDER	
THE SUM OF <b>EIGHTY SEVEN AND NO/100</b>		DOLLARS	<b>\$87.00</b>
AMOUNT TELEGRAPHED FROM <b>PHILADELPHIA PENN</b>		<b>SEPT 4TH 1933</b>	
★		THE WESTERN UNION TELEGRAPH COMPANY	
TO <b>THE CHASE NATIONAL BANK</b> OF THE CITY OF NEW YORK FINK STREET CORNER OF NASSAU		<i>R. V. Snell</i> MONEY ORDER AGENT	
		<i>Arthur J. Fox</i> TREASURER	
THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN			

\*This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

**NOTE**—Form 3300-C accompanies this draft when delivered or mailed.

[fol. 125, 126]

FIG. 7—NOTICE TO PAYEE OF A "CAUTION" ORDER—FORM 75-C

[fol. 127, 128]

78

Form 75-C

**QUICK SERVICE**

**WESTERN UNION**

**LOW RATES**

## MONEY ORDER NOTICE

Money Sent by Telegraph and Cable to All the World

R. B. WHITE  
PRESIDENT

NEWCOMB CARLTON  
CHAIRMAN OF THE BOARD

J. C. WILLEVER  
FIRST VICE PRESIDENT

---

No. 8 231

B- LOS ANGELES CALIF SEPT 4TH 1933

To MRS FRANCES THOMPSON

MRS. OR MISS  
2740 WILSHIRE BLVD  
ADDRESS

We have received a telegraphic money order for you with the following message:

WIRE TRAIN AND TIME ARRIVAL

---

Will you please call at our office, 3225 WILSHIRE BLVD to receive the money as soon as possible and in no case later than 72 hours since at the end of that time we are required to cancel the order and return the amount to the sender.

Please bring this notice with you and also satisfactory evidence of identity such as some of the following:

Membership cards	Bank book
Receipted bills	Automobile license
Letters addressed to you	Western Union collect card

or any other documentary evidence you may have.

Bring This Notice With You THE WESTERN UNION TELEGRAPH COMPANY •

[fols. 135, 136]

## DEFENDANT'S EXHIBIT 8

FIG. 2—SENDER'S RECEIPT—FORM 4178

THE WESTERN UNION TELEGRAPH COMPANY 4178

RECEIPT

WY-Philadelphia Pa. Sept 4 1939

Received from William G. Smith (\$ 87<sup>00</sup>)

→ Eighty seven and <sup>no</sup> 100 Dollars, in payment of

☐ Account for the month of \_\_\_\_\_ 19\_\_

→ ☒ Telegraphic ~~(Money Order)~~ ~~(Shopping Order)~~ To Miss Marion Smith

☐ Telegram or Cable At Pittsburgh Pa

☐ Deposit on Collect Telegram  
(returnable after 24 hours)

→ MONEY ORDER CHARGES PAID \$ 1<sup>55</sup> B. G. R. James

THE WESTERN UNION TELEGRAPH COMPANY

FIG. 3—STICKER—FORM 3870

The company having no disbursing office at the point to which this money order is directed, payment will necessarily be made through a local bank or a nearby money order office. The money order is therefore subject to such delay as such method of payment may involve.

3870

**T**HIS Money Order can be cashed through any person or concern to whom the payee is personally known. If to be cashed at a Western Union office, satisfactory evidence of identity will be required.

No. **C 10000** **WESTERN UNION MONEY ORDER**

ISSUED AT **H - PITTSBURGH PENN** **SEPT 4 1939**

When Countersigned at Point of Issue **PAY TO MISS MARION SMITH - - - - -** OR ORDER

THE SUM OF **EIGHTY SEVEN AND NO/100 - - - - -** DOLLARS **\$87.00**

AMOUNT SENT FROM **PHILADELPHIA PENN** **SEPT 4TH 1939**

★ TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE THROUGH THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK PINE STREET, CORNER OF NASSAU

COUNTERSIGNED **1-74** **PA. Anau** MONEY ORDER AGENT

THE WESTERN UNION TELEGRAPH COMPANY **E. O. King** TREASURER

(THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN)

★This line ordinarily to remain blank but may be used to show: (a) sender's name when order is payable to a firm; (b) name of payee and BNK point when passed through a forwarding bank; (c) description of refunded money orders; or (d) the words "Cashed for Columbus State Bank credit John Doe," etc.

NOTE—Form 3300-C accompanies this draft when delivered or mailed.

FIG. 10—DRAFT TO FORWARDING BANK FOR MONEY ORDER TO "BNK" POINT—FORM 2738

No. **C 10000** **WESTERN UNION MONEY ORDER**

ISSUED AT **PITTSBURGH PENN** **SEPT 6 1939**

When Countersigned at Point of Issue **PAY TO MELLON NATIONAL BANK - - - - -** OR ORDER

THE SUM OF **SEVENTY FIVE AND 30/100 - - - - -** DOLLARS **\$75.30**

AMOUNT SENT FROM **PHILADELPHIA PENN** **SEPT 6 1939**

FOR MISS HELEN ROBERTS, NEW WATERFORD OHIO  
TO THE WESTERN UNION TELEGRAPH COMPANY

PAYABLE THROUGH THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK PINE STREET, CORNER OF NASSAU

COUNTERSIGNED **1-74** **PA. Anau** MONEY ORDER AGENT

THE WESTERN UNION TELEGRAPH COMPANY **E. O. King** TREASURER

(THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN)

[Fols. 141, 142]



FIG. 13—DRAFT COVERING REFUND OF A CANCELLED ORDER—FORM 2738

[15, 143, 144]

No. <b>C 10000</b>		<b>WESTERN UNION MONEY ORDER</b>	
<i>When Countersigned</i> at Point of Issue		ISSUED AT <b>WX- PHILADELPHIA PENN</b>	SEP 7 1939
PAY TO <b>WILLIAM J SMITH</b>		CITY AND STATE	DATE
		OR ORDER	
THE SUM OF <b>EIGHTY SEVEN AND NO/100</b>		DOLLARS <b>\$87.00</b>	
AMOUNT SENT FROM <b>PHILADELPHIA PENN</b>		SEPT 4TH 1939	
REFUND MONEY ORDER TO		DATE	
<b>MISS MARION SMITH, PITTSBURGH PENN</b>		THE WESTERN UNION TELEGRAPH COMPANY	
TO THE WESTERN UNION TELEGRAPH COMPANY		COUNTERSIGNED	
PAYABLE THROUGH		1-74 <i>J. R. Jones</i>	
<b>THE CHASE NATIONAL BANK</b>		MONEY ORDER AGENT	
<b>OF THE CITY OF NEW YORK</b>		<i>W. H. Jones</i>	
<b>NINE STREET, CORNER OF NASSAU</b>		TREASURER	
THIS ORDER MAY BE CASHED BY ANYONE TO WHOM THE PAYEE IS KNOWN			

[fol. 144a]

DEFENDANT'S EXHIBIT No. 5

## FORM 75-B, REFUND NOTICE

Form 75-B

WESTERN UNION  
MONEY TRANSFERMoney Transferred by Telegraph and Cable  
to all the World

## REFUND NOTICE

Buffalo, N. Y., Sept. 4, 1925

**To Richard Brown**  
**7th & Walnut Sts.**

The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our office at 5 South Division St. it will be refunded upon presentation of satisfactory evidence of identity.

THE WESTERN UNION TELEGRAPH  
COMPANY**Bring This Notice With You**

[fol. 144b]

DEFENDANT'S EXHIBIT No. 6

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FIG. 11—NOTICE TO SENDER OF  
UNDELIVERED MONEY ORDER—

FORM 4022

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Form 4022

THE WESTERN UNION TELEGRAPH  
COMPANY

NOTICE REGARDING MONEY ORDER

R. B. White  
President

J. C. Willever  
First Vice President

Newcomb Carlton  
Chairman of the Board

3946 MARKET STREET

WX—PHILADELPHIA PENN SEPT 4th 1933  
Street Address, City and Date

P 349

Delivery No.

MR WILLIAM J SMITH

Mr., Mrs. or Miss

509 SOUTH 41 ST

Address

Your money order of SEPT 4TH 1933 to  
Date

MISS MARION SMITH at PITTSBURGH  
Name of Payee Place

PENN cannot be paid for the following reason:  
PAYEE LEFT THE CITY—NO FORWARDING  
ADDRESS KNOWN

[fol. 144c] The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime. If you wish to communicate with us about the order please call ALLEGHENY 4321 and ask for the Money Order Department. Changes in the name or address of payee will be charged for at usual telegram rates.

THE WESTERN UNION TELEGRAPH  
COMPANY

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[fol. 144d]

DEFENDANT'S EXHIBITS NOS. 10 AND 11—

APPLICATION FORMS 72 A AND B

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Reverse Side

MONEY TRANSFERS ARE SUBJECT TO  
THE FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium, for the further transmission and final payment of this order.

[fol. 144e]

## DEFENDANT'S EXHIBITS NOS. 12 AND 13

---

Reverse Side**MONEY ORDERS ARE SUBJECT TO THE  
FOLLOWING CONDITIONS:**

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank or other medium for the further transmission and final payment of this order.

[fol. 144f]

DEFENDANT'S EXHIBIT No. 14—FORM 72H

---

Reverse SideMONEY ORDERS ARE SUBJECT TO THE  
FOLLOWING CONDITIONS:

Domestic orders will be canceled and refund made to the sender if payment cannot be effected within 72 hours after receipt at paying office (Ellis Island, N. Y., excepted). Orders payable at Ellis Island will be canceled after the expiration of five days.

In the case of a Foreign Order the Foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer.

In the case of a Foreign Order the equivalent, in the currency of the country of payment, of the sum named will be purchased promptly; and if for any reason payment cannot be effected, refund will be made by the Company and will be accepted by the depositor on the basis of the market value of such foreign currency in American funds, at New York, on the date when notice of cancelation is received there by the Company from abroad.

When the Company has no office at destination authorized to pay money, it shall not be liable for any default beyond its own lines, but shall be the agent of the sender, without liability, and without further notice, to contract on the sender's behalf with any other telegraph or cable line, bank [fol. 144g] or other medium, for the further transmission and final payment of this order.

In any event, the company shall not be liable for damages for delay, non-payment or underpayment of this money order, whether by reason of negligence on the part of its agents or servants or otherwise, beyond the sum of five hundred dollars, at which amount the right to have this money order promptly and correctly transmitted and promptly and fully paid is hereby valued, unless a greater

value is stated in writing on the face of this application and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent thereof.

In the event that the company accepts a check, draft or other negotiable instrument tendered in payment of a money order, its obligation to effect payment of the money order shall be conditional and shall cease and determine in case such check, draft or other negotiable instrument shall for any reason become uncollectible, and in any event the sender of this money order hereby agrees to hold the telegraph company harmless from any loss or damage incurred by reason or on account of its having so accepted any check, draft or negotiable instrument tendered in payment of this order.

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[fol. 153]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 18 May Term, 1960

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COMMONWEALTH OF PENNSYLVANIA, by SIDNEY GOTTLIEB,  
Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY,  
Appellant.

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Appeal from the Decree of the Court of Common Pleas  
of Dauphin County at No. 236 Commonwealth Docket, 1953

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OPINION OF THE COURT—Filed: June 29, 1960

Musmanno, J.

The Western Union Telegraph Company, which is a New York corporation, operates in Pennsylvania, as it does in all States of the Union. In the course of its business it collects money for transmission to other places by means



of telegraphic money orders, that is to say, a sender deposits so much money at the sending office and the Western Union telegraphs to the office geographically closest to the address of the payee an order to pay the payee the amount specified by the payor. It sometimes occurs, however, because of the uncertainties of life, with its untoward happenings including accidents, earthquakes, fires, sudden removals, and even death, that the designated payee never gets the money telegraphed to him, in which event the sending Western Union office is so notified and it then pays the money back to the original depositor.

But unexpected happenings transpire even at the sender's end and, as a result of accident, earthquake, fire, or even death, the Western Union sending office is thus unable to return the money it had accepted for transmission. What happens to this money after sufficient time has elapsed to warrant the assumption that the sender will never turn up to collect back his money? The Western Union Telegraph Company answer this question with the flat statement that it is entitled to the money.

If there were no declared law on the subject, some color of right would attach to the Western Union's claims because, in the absence of an established potentially-collecting owner, the possessor of property, through discovery, finding or otherwise, obviously can hold it against the world. However, there is no vacuum in the law for a situation of this kind. The Legislature of Pennsylvania has specifically provided that:

[fol. 154] "(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled, has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.

"(c) Whensoever any real or personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period

of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth." (Escheat Act of 1889, May 2, 1889, P.L. 66, Sec. 3) as amended by the Act of 1953, July 29, P.L. 986, section 1 (27 P.S. 333).

Proceeding under this statute, the Commonwealth of Pennsylvania, through its Secretary of Revenue, appointed Sidney Gottlieb, Esq., of Pittsburgh, as Escheator to collect outstanding sums such as those involved in this case. Accordingly, on December 21, 1953, Mr. Gottlieb filed in the Court of Common Pleas of Dauphin County a Petition for Escheat of certain sums in the hands of the Western Union Telegraph Company which for seven years had remained unclaimed by their original owners. The Western Union Telegraph Company denied the right of the Commonwealth to escheat under the circumstances, and a hearing was scheduled in the Court of Common Pleas. Before the hearing, however, the parties agreed on a Stipulation of Facts which was filed April 18, 1958. After due consideration of the agreed-on facts, assisted by arguments of the contending parties, the Court on December 5, 1958, found for the Commonwealth in the sum of \$45,513.99, the amount in controversy. Western Union appealed.

The Western Union contests the lower Court's findings on three bases: (1) The Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process.

The respondent Western Union says in its brief that the Petition for Escheat is—

"directed solely to the money which was paid by the senders but as to which Western Union was unable either to make payment in money to the persons to whom the senders had instructed payment to be made or to refund the money to the sender,"

[fol. 155] and then argues that "these sums of money are not in Pennsylvania." The respondent points out that it is not per se a financial institution; that it is a telegram-transmitting organization and that it did not at any time during the period covered by the Petition in Escheat, or at any time, have fiscal or sub-fiscal agencies in Pennsylvania.

It emphasizes that the money paid by the sender in any particular transaction was not held isolatedly from other moneys and was not earmarked as belonging to the particular person who had deposited it for transmission to another person. The money was placed in a cash drawer and there it intermingled with money collected for telegrams and with other receipts. Thus, the respondent submits, it is impossible for the Court to point its finger to any specific "money" and say that this is the money which a sender deposited and which now has been unclaimed for seven years.

This argument almost approaches a play in semantics. It would be difficult to find a more generic term than *money*. When a lender approaches a person to whom he made a loan a long time before and says to him: "I want my money back," he obviously does not ask for the specific greenbacks he put into the hands of the lendee. He will take any greenbacks, yellowbacks, coins, bank checks, or even promissory notes which, in their total value, will be the exact sum he turned over to the defaulting debtor. Thus, the Commonwealth here, in its Petition for Escheat, was not calling upon Western Union to search out the original coins and currency deposited by the senders who have since vanished in the mysterious sea of Whereabouts Unknown. The Commonwealth asked for the fiscal equivalent of that money.

Western Union itself does not think of money in a specific sense. When a customer wishes to transmit a monetary sum by telegraph he fills out a Western Union form which includes such designations as "money transfers" and "message to be delivered with the money." No one assumes that by the phrase "money transfer", Western Union is expected to actually transport to the payee the coins and currency the customer places on the counter and for which he is handed a receipt.

The notice which is sent to the payee carries the sentence: "We have received a sum of money by telegraph for you." By the use of this language Western Union does not intend to suggest that the legal tender it is ready to pay over to [fol. 156] the payee is the exchange-stained currency and travel-battered coins which came from the pocket of the sender.

The interpretation argued for by Western Union contradicts what the Courts have often declared on the subject. The Supreme Court of the United States said in *Connecticut Mutual Life Insurance Company v. Moore*, 333 U.S. 541:

"The statutory reference 'to any moneys held or owing' does not refer to any specific assets of an insurance company, but simply to the obligation of the companies to pay it."

In *Newhard v. Newhard*, 303 Pa. 299, 301, this Court said:

"The word 'moneys' is a general term and may and often does include property other than currency."

The respondent also argues that the Commonwealth may not escheat "moneys" in its possession because it has issued drafts to payees and even to senders which are still outstanding, but the mere issuance of drafts does not constitute payment, since there is no agreement between the parties to that effect. *Levan v. Wilten*, 135 Pa. 61, 63; *Easton School District v. Continental Casualty Co.*, 304 Pa. 67, 71; *North Penn Iron Co. v. N. J. Bridge Co.*, 35 Pa. Superior Ct. 84, 85.

Thus, interpreting the Commonwealth's Petition as seeking escheat of the unclaimed obligations held by Western Union rather than any specific moneys deposited by the senders and which Western Union no longer possesses, we inevitably come to the conclusion that the *res* of the escheat proceedings, is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the Courts of the Commonwealth. Personal service of the Petition on offices of the Western Union within the confines of the

Commonwealth constituted a seizure of the *res*, which is the subject of the escheat.

On this subject, the Supreme Court of the United States, in *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439, said:

"Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation . . .

"We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the [fol. 157] source of the obligations.' *Estin v. Estin*, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service."

It was held in that case that the domiciliary State of the corporation, New Jersey, could escheat its stock certificates and undelivered dividends even though the addresses of some of the owners were in other states and foreign countries.

The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania. As stated in *Connecticut Mutual Life Ins. Co. v. Moore*, 297 N.Y. 1, 9:

"The core of the debtor obligations of the plaintiff companies was created through acts done in this State,

and the ties thereby established between the companies and the State were without more sufficient to validate the jurisdiction here asserted by the legislature."

The Supreme Court of the United States, at 333 U.S. 541, affirmed this New York decision.

We find no error in the holding of the lower Court that—

"when ownerless property held by a foreign corporation is within the dominion of this state, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has extensive contact with the transactions by which the res was created . . ."

Then Western Union contends that it would be unjust to require it to give up the unclaimed moneys in its possession because it might be besieged later on by senders, payees, or holders in due course of outstanding drafts. This picture conjures up a fear without objective basis. The instant escheat proceedings have to do with moneys which have been vainly seeking their missing owners for at least seven years. Thus, outstanding drafts would be stale-dated and therefore not honored. In any event, stop pay-[fol. 158] ments could be issued against them. But, most important of all, no belated claims for outstanding moneys could overcome the finality of escheat proceedings even without personal service on interested parties. It must be emphasized that escheat proceedings are in rem and not in personam.

The proceeding is not one in personam—at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, . . . for confiscation, . . . ;



for forfeiture . . . ; for condemnation, . . . ; for registry of titles, . . . ; and libels for possession brought by the Alien Property Custodian. . . . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard . . . There is a seizure or its equivalent. . . . Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants."

(*Security Savings Bank v. California*, 263 U.S. 282)

This decision puts into bold relief the irrefutable proposition that:

"Seizure of the deposit is effected by personal service made upon the bank . . . . Thereby the res is subjected to the jurisdiction of the court . . . ."

Thus, the seizure of the *res* constituted constructive notice on all involved parties. In *Hollingsworth v. Barbour*, 29 U.S. (4 Pet.) 466, 475, the Supreme Court affirmed the lower court's statement that—

"The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

Moreover, in the instant case, there was a posting of the notice of the escheat proceedings in the office of the Prothonotary of Dauphin County and publication of the notice of the escheat proceedings in each of three newspapers of general circulation in the County of Dauphin, the City of Philadelphia and the City of Pittsburgh. These notices were directed "To all persons whatsoever claiming an interest in the personal property herein referred to" and stated that



the "names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary (of Dauphin Co.)." The notices described the property sought to be escheated as consisting of—

"amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years."

The Western Union submits that this notice cannot apply to cases where the sender or payee has received a draft which still remains unpaid, but, as already stated, the draft could not be regarded payment since there was no contract to that effect between the parties. Furthermore, the notice already quoted applies against third parties other than the sender, as witness the statement:

"The whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys."

Therefore, it is beyond refutation that all interested parties are on notice that publication of the indicated notice represents seizure of the *res* by personal service upon Western Union here in Pennsylvania. Nor does it matter that potentially interested parties are not residents of Pennsylvania. It is the very fact that their whereabouts are unknown and have been unknown for over seven years that builds the foundation on which the escheat action rests. We made this clear in *Philadelphia Electric Company* case, 352 Pa. 457:

"The Supreme Court of the United States has confirmed the jurisdiction of a State court over intangibles and its power to subject them to escheat even as against possible non-residents."

Nor would Western Union need to fear that the moneys here involved would be subject to double escheat in New York, the State of its domicile. The decree of escheat here affirmed is naturally subject to the Full Faith and Credit [fol.160] Clause of the United States Constitution, as stated in *Standard Oil Co. v. New Jersey*, 341 U.S. 428:

"The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

Decree affirmed, each party to bear own costs.

Justice Bell took no part in the consideration of decision of this case.

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[fol. 161]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

No. 18 May Term, 1960

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COMMONWEALTH OF PENNSYLVANIA, By Sidney Gottlieb,  
Escheator,

v.

THE WESTERN UNION TELEGRAPH COMPANY, Appellant.

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NOTICE OF APPEAL TO THE SUPREME COURT OF THE  
UNITED STATES—Filed September 27, 1960

I. Notice is hereby given that The Western Union Telegraph Company, the appellant above named, appeals to the Supreme Court of the United States from the final decree

of the Supreme Court of Pennsylvania, entered in this proceeding on June 29, 1960, affirming the decree of the Court of Common Pleas of Dauphin County, Pennsylvania, directing that a judgment in escheat be entered against the appellant.

This appeal is taken pursuant to 28 U.S.C.A. Section 1257(2).

II. The Prothonotary will please prepare a transcript of the Record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in the said transcript the following:

1. Petition for Escheat, filed December 21, 1953.
2. Answer to Petition for Escheat, filed February 20, 1954.
3. Petition for Order Fixing Time and Place of Hearing and Directing Service of Notice by Posting and Publication. [fol. 162]
4. Order of March 10, 1958, Fixing Time and Place of Hearing and Directing Posting and Publication of Notice Thereof.
5. Stipulation of Facts, filed April 18, 1958.
6. Opinion of the Court of Common Pleas of Dauphin County, filed December 15, 1958.
7. Decree of the Court of Common Pleas of Dauphin County, dated December 15, 1958.
8. Defendant's Exceptions, filed January 10, 1959.
9. Opinion of the Court of Common Pleas of Dauphin County, filed July 6, 1959.
10. Final Decree of the Court of Common Pleas of Dauphin County, dated July 6, 1959.
11. Exhibits (The exhibits listed below, except where otherwise noted, are the same exhibits or portions of exhibits printed, at the pages indicated, in the Record for Appellant heretofore filed in this Court):

A—First two pages of Record of Unpaid Money Orders (Record, pp. 87a-89a) and part of pages 97 and 98 of Record of Unpaid Money Orders (pages 97 and 98 were not printed in the Record for Appellant, but copies of these pages are attached hereto).

D-1—Excerpt, Book of Rules of December 1, 1916 (Record, 89a).

D-2—Excerpt, Book of Rules of October 1, 1918 (Record, 90a).

D-3—Excerpt, Book of Rules of February 1, 1920 (Record, 90a-91a).

D-4—Excerpt, Book of Rules of February 1, 1923 (Record, 91a-92a).

[fol. 163] D-5—Excerpt, Book of Rules of February 1, 1936 (Record, 93a-94a).

D-7—Excerpt, FCC Tariff of January 23, 1939 (Record, 95a).

D-5—Money Transfer Application Form (Record, 105a).

—Refund Draft (Record, 113a).

—Money Transfer Draft (Record, 115a).

D-8—Sender's Receipt (Record, 131a).

—Money Order Draft (Record, 133a).

—Money Order Draft (Record, 137a).

III. The following questions are presented by this appeal:

1. Is the Pennsylvania Act of May 2, 1889, P. L. 66, as amended (27 Purdon Stat. §§ 1 *et seq.*), repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

(a) the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and delivered by a New York corporation outside Pennsylvania to per-

sons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

(b) the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

(c) unclaimed amounts which, but for the bar of [fol. 164] the statute of limitations, would be collectible by persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to states other than Pennsylvania before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Does the said Pennsylvania statute contravene Article VI, clause 2, and Article I, Section 8, clause 3, of the Constitution of the United States and the laws of the United States made in pursuance thereof, particularly the Communications Act of 1934, as amended (47 U.S.C. §§ 151 *et seq.*), in causing the escheat of amounts equal to those paid in connection with interstate and foreign telegraphic money order transactions, which transactions and the accounting therefor have been regulated by Congress to the exclusion of State regulation or control?

3. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other States or third persons, of claims based upon negotiable drafts and other choses in action?

4. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the [fol. 165] United States, as a deprivation of property without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

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Attorneys for The Western Union Telegraph Company, Appellant.

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[fol. 166]

**RECORD OF UNPAID MONEY ORDERS FOR THE  
YEAR 1946, ORIGINATING IN PENNSYLVANIA  
AND DESTINED TO NEW YORK (EXHIBIT A,  
PAGES 97-98)**

Omitted. Printed at side folios 89a and 89b, printed pages 59 and 60.

[fol. 167] Proof of Service (omitted in printing).

[fol. 168] [File endorsement omitted]

[fol. 170] Triple Certificate to foregoing transcript (omitted in printing).

[fol. 171]

SUPREME COURT OF THE UNITED STATES

No. 543—October Term, 1960

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WESTERN UNION TELEGRAPH COMPANY, Appellant,

vs.

PENNSYLVANIA, by SIDNEY GOTTLIEB, Escheator.

---

Appeal from the Supreme Court of the Commonwealth  
of Pennsylvania, Middle District.

ORDER NOTING PROBABLE JURISDICTION—January 23, 1961

The statement of jurisdiction in this case having been  
submitted and considered by the Court, probable jurisdic-  
tion is noted.



SUPREME COURT, U. S.

FILED

NOV 25 1960

JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1960

NO. ~~543~~ 15

THE WESTERN UNION TELEGRAPH COMPANY,  
Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA, by SIDNEY  
GOTTLIEB, Escheator, Appellee

APPEAL FROM THE SUPREME COURT  
OF PENNSYLVANIA

JURISDICTIONAL STATEMENT AND APPENDICES

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## INDEX

	PAGE
Opinions of the Courts Below .....	1
Grounds on Which Jurisdiction Is Invoked .....	2
Questions Presented .....	3
Statement of the Case .....	5
Substantiality of the Questions Involved .....	11
Conclusion .....	20
 Appendix A	
Opinion of the Court of Common Pleas of Dau- phin County, filed December 15, 1958 .....	21
Opinion of the Court of Common Pleas of Dau- phin County, filed July 6, 1959 .....	42
Opinion of the Supreme Court of Pennsylvania	49
Appendix B—Pertinent Pennsylvania Statutes ....	61
Appendix C—Abandoned Property Laws of States Other Than Pennsylvania .....	64

## TABLE OF CITATIONS

### CASES

Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541 .....	2, 3, 11, 14
Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 .....	2, 10
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 .....	2, 19
Security Savings Bank v. State of California, 263 U.S. 282 .....	18
Standard Oil Co. v. New Jersey, 341 U.S. 428	2, 11, 14, 16
State of New Jersey v. Western Union Telegraph Company, 17 N.J. 149, 110 A.2d 115 (1954) ..	12, 17

*Table of Citations.*

CONSTITUTION AND STATUTES	PAGE
Massachusetts General Laws, Chap. 200A.....	17
New Jersey Rev. Stat., Title 2A:37-29 <i>et seq.</i> .....	17
New York Abandoned Property Law (McKinney's Consolidated Laws of New York, § 1309) .....	9, 10, 12, 17
Pennsylvania Escheat Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes, §§ 1, 41-111, 333) .....	2, 3, 5, 6, 13, 15, 18
Title 28 U.S.C. § 1257 (2) .....	2
Uniform Disposition of Abandoned Property Act...	17
U.S. Constitution—Fourteenth Amendment, § 1....	3, 4, 6, 10, 16, 19

IN THE  
**Supreme Court of the United States**

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**OCTOBER TERM, 1960**

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**NO. ....**

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**THE WESTERN UNION TELEGRAPH COMPANY,**  
Appellant,

v.

**COMMONWEALTH OF PENNSYLVANIA, by SIDNEY  
GOTTLIEB, Escheator, Appellee**

---

**APPEAL FROM THE SUPREME COURT  
OF PENNSYLVANIA**

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**JURISDICTIONAL STATEMENT**

The appellant, The Western Union Telegraph Company, a corporation of the State of New York, appeals from a decree of the Supreme Court of Pennsylvania entered on June 29, 1960, affirming a decree of escheat entered by the Court of Common Pleas of Dauphin County, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

**A. Opinions of the Courts Below.**

The opinion of the Supreme Court of Pennsylvania is reported at 400 Pa. 337, 162 A. 2d 617. The opinions of the Court of Common Pleas of Dauphin County are reported at 73 Dauphin County Reports 160 and 74 Dauphin County Reports 49. Copies of these opinions are attached as Appendix A.

*Grounds for Jurisdiction.*

**B. Grounds on Which Jurisdiction Is Invoked.**

1. This case arose on a petition for the escheat of money filed in the Court of Common Pleas of Dauphin County, Pennsylvania, by Sidney Gottlieb, Escheator of the Commonwealth of Pennsylvania, under the Pennsylvania Escheat Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes §§ 1, 41-111, 333).

2. The decree sought to be reviewed was filed on June 29, 1960, and appellant filed its notice of appeal in the Supreme Court of Pennsylvania on September 27, 1960.

3. The statutory provision believed to confer on this Court jurisdiction of the appeal is Title 28 U.S.C. § 1257(2).

4. Cases believed to sustain the jurisdiction are:  
*Standard Oil Co. v. New Jersey*, 341 U.S. 428;  
*Connecticut Mutual Life Insurance Co. v. Moore*,  
333 U.S. 541;  
*Mullane v. Central Hanover Bank & Trust Co.*,  
339 U.S. 306;  
*Dahnke-Walker Milling Co. v. Bondurant*, 257  
U.S. 282.

5. The statute of Pennsylvania the validity of which is involved is the Escheat Act of May 2, 1889, P.L. 66, as amended by the Act of July 29, 1953, P.L. 986 (27 Purdon's Statutes, §§ 1, 41-111, 333). The pertinent statutory provisions are attached as Appendix B.

## Questions Presented.

### C. Questions Presented.

This case involves the right of Pennsylvania under provisions of its escheat statute, the constitutionality of which is here in issue, to take money which a New York corporation received in connection with telegraphic money order transactions and sent to New York more than seven years before such provisions of the Pennsylvania statute were enacted. A substantial part of the money has been or may be claimed by New York. In connection with most of the transactions involved, negotiable drafts had been issued in states other than Pennsylvania, payable at banks outside Pennsylvania; in these transactions there is an additional conflict of escheat laws, between Pennsylvania and the states of situs of the negotiable drafts. A similar question, where insured persons or beneficiaries under life insurance policies were not residents of the state claiming jurisdiction to take proceeds by escheat, was expressly reserved in the six-to-three decision of this Court in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, at p. 549.

Other questions also are involved. In detail, the questions are as follows:

1. Is the Pennsylvania Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes §§ 1 *et seq.*), repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

- a. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and

*Questions Presented.*

delivered by a New York corporation outside Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

b. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

c. unclaimed amounts owed to persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other states or third persons, not parties to the proceedings, of claims based upon negotiable drafts and other choses in action?

3. Is the said Pennsylvania statute repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property



### *Statement of the Case.*

without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

#### **D. Statement of the Case.**

Prior to July 29, 1953, there was no Pennsylvania statute under which the Commonwealth of Pennsylvania could have claimed the right to escheat the amounts involved in these proceedings. On that date, the Pennsylvania Escheat Act of 1889, *supra*, which applied only to the escheat of property held by fiduciaries and to estates of intestates without known heirs or kindred, was amended to bring within its scope "every . . . form of personal property, tangible or intangible, and all interests therein, whether legal or equitable". Act of July 29, 1953, P. L. 986, § 5 (27 Purdon's Statutes § 111). The Commonwealth of Pennsylvania on December 21, 1953 (within five months after the amendment of the statute), began this proceeding against appellant by filing in the Court of Common Pleas of Dauphin County a petition for escheat under the Act.

The petition (R. 4-8\*) alleged that in many instances appellant in conducting its money order service received at its places of business in Pennsylvania moneys from divers persons for transmission to other

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\*All record references are to numbers at bottom of pages.

*Statement of the Case.*

persons, but payment could not be effected. In all instances in which the whereabouts of the sender had been unknown to appellant and the moneys had been unclaimed for more than seven years the petition averred that the moneys had escheated to the Commonwealth and prayed that the court enter a judgment of escheat.

The appellant in its answer (R. 8-16) raised the following federal questions which it is asking this Court to review:

1. - Since the amounts sought in the petition are not subject to the control of the Commonwealth of Pennsylvania, the Act of 1889, as amended, *supra*, is unconstitutional if it purports to cause an escheat of these amounts to the Commonwealth of Pennsylvania in that it deprives the appellant of property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States (R. 13-14);

2. Such an escheat would subject the appellant to multiple liability in that it would not bar the collection from the appellant, by other states or third persons, of claims for the same amounts, in violation of the due process of law provision of the Fourteenth Amendment to the Constitution of the United States (R. 15-16);

3. The Act is contrary to the Constitution of the United States in that it makes no provision for due and proper notice to payees and senders of the money orders involved and such notice had not been given (R. 16).

The Court of Common Pleas of Dauphin County then directed (R. 19-21) that notice be published, and pursuant to the court's order a notice was posted in the office of the prothonotary of the court and published once in newspapers of general circulation in Dauphin

County, Pennsylvania; Philadelphia, Pennsylvania; and Pittsburgh, Pennsylvania. The notice was addressed to "all persons whatsoever claiming an interest in the personal property herein referred to" (R. 19), referred to the petition for escheat on file, and added (R. 20) :

"The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.

"The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders . . ."

The parties entered into and filed a stipulation of facts (R. 22-50). It was stipulated, among other things, that The Western Union Telegraph Company is a corporation organized and existing under the laws of New York, with its principal place of business at 60 Hudson Street, New York, New York; that it is authorized to do business in Pennsylvania and the other states in the United States, the District of Columbia and foreign countries; and that as part of its business it conducts in these jurisdictions a telegraphic money order service, subject to rules and regulations embodied in tariff provisions filed with and approved by the federal and state regulatory commissions having jurisdiction over telegraphic communications services (R. 91-97).

*Statement of the Case.*

The procedure observed in the handling of the money order transactions was as follows (R. 27-29): The sender filled out a money order application form at the telegraph company's office of origin, paid the principal and tolls and was given a receipt for the moneys. A telegraph message was then transmitted to appellant's office located nearest to the designated payee, directing that office to pay the principal amount of the money order to the payee in the form of a negotiable money order draft. Upon receipt of the message the office of destination prepared the money order draft and a notice to the payee. The payee, after being notified and appearing at the office, was given this draft. The payee then endorsed the draft, handed it back and received cash in the amount specified, or if he preferred he took the draft with him to make such use thereof as he saw fit, in which event he was required to sign a receipt for the draft. If the payee could not be located or if after being notified he failed to call for the draft within 72 hours, the office of destination transmitted a message to the office of origin advising the latter of the reasons for nonpayment. The office of origin then notified the sender, and when the sender called at the office he received a draft which he either endorsed and cashed immediately at the office or, if he preferred, carried away with him.

The moneys received from the sender were intermingled with other funds of appellant and were used to meet various operating requirements; any excess of such funds above operating needs was transferred to appellant's account at one of its thirteen fiscal and sub-fiscal agencies, none of which was located within Penn-

*Statement of the Case.*

sylvania; and all money order drafts were drawn on one of these thirteen agencies (R. 29-31).

The stipulated facts also include (R. 48, 89-91) a compilation of the amounts of money order transactions involved in this case, separately classified to show intrastate transactions which originated in Pennsylvania and were to be consummated in Pennsylvania, interstate transactions which originated in Pennsylvania and were to be consummated outside Pennsylvania, and, as to the latter, those transactions the amounts of which had been paid to the State of New York and those which had been reported but the amounts of which had not been paid to the State of New York under its Abandoned Property Law.

Appellant succeeded in the vast majority of its money order transactions in effecting delivery of drafts to the designated payee or to the sender if the payee could not be found (R. 47). All of the money order transactions here involved therefore fall into one of two classes, namely, a vast majority as to which drafts have been issued and a small number as to which no drafts have been issued.

After a hearing the Court of Common Pleas filed an opinion and decree directing that a judgment of escheat be entered (R. 51-75; App. A, 21-41). Appellant filed exceptions to the court's findings of fact, conclusions of law, and decree (R. 76-80). After additional argument, the court filed an opinion and final decree (R. 80-88; App. A, 42-49) directing that "judgment of escheat be entered in favor of the escheator and against the Western Union Telegraph Company in the sum of \$39,857.74" (R. 88; App. A, 49). This sum covered the amounts of

*Statement of the Case.*

both intrastate and interstate transaction originating in Pennsylvania, less the amounts of items which had already been paid to New York State under its Abandoned Property Law (R. 56, 75, 85-86; App. A, 25, 40, 46-47).

From this decree the appellant appealed to the Supreme Court of Pennsylvania. The questions presented on the appeal to that court were the same as those raised in the pleadings and before the lower court. These questions were raised by the brief and argument of the appellant, which is the sole method of doing so, since there is no provision in the law or practice of Pennsylvania requiring or permitting the filing of exceptions or assignments of error upon such an appeal. The pleadings were part of the record before the state Supreme Court.

The Supreme Court of Pennsylvania specifically decided against appellant on all of the issues now presented to this Court on appeal, stating (R. 154; App. A, 51): "The Western Union contests the lower court's findings on three bases: (1) the Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process."

In rejecting the appellant's contentions the Pennsylvania Supreme Court applied and enforced to the appellant's disadvantage a state statute which the appellant had, in its answer and at all subsequent stages, insisted was, if so applied and enforced, repugnant to the Fourteenth Amendment. Cf. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282, 290.



*Substantiality of Questions Involved.*

**E. Substantiality of the Questions Involved.**

The questions presented on this appeal have never been passed upon by this Court. With the rapid increase in the number of states enacting abandoned property laws affecting various types of intangible property,\* the questions are of great public importance, particularly to corporations and other business entities conducting operations in more than one state.

1. Since no senders or payees of the money orders nor any holders of the negotiable drafts here involved, are shown to have been residents of Pennsylvania, the first question that we have set forth above is like that left open in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541. There this Court upheld the power of the State of New York to escheat the proceeds of life insurance policies issued by foreign insurance corporations, but, at p. 549, restricted its decision to the situation "where the policies were issued for delivery in New York upon the lives of persons then resident in New York . . . We do not pass upon the validity in instances where insured persons, after delivery, ceased to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy. As interests of other possible parties not represented here may be affected by our conclusions and as no specific instances of those types appear in the record, we reserve any conclusion as to New York's power in such situations." The only other escheat case decided by this Court since that decision is *Standard Oil Co. v. New Jersey*, 341 U.S. 428, where the escheat was by the domicil-

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\* These statutes are listed in Appendix C hereof.



*Substantiality of Questions Involved.*

iary state and where the question reserved in the *Moore* case was not involved.

In *State of New Jersey v. Western Union Telegraph Co.*, 17 N. J. 149, 110 A.2d 115 (1954), the court discussed (17 N. J. at pp. 158 *et seq.*) a contention of the present appellant that unrefunded telegraphic money orders arising from the business carried on in New Jersey had "no situs in New Jersey under the United States Supreme Court tests of situs as the determinant of state power to escheat intangible personal property within its reach," adding that "uncertainty how the federal Supreme Court would resolve it from the facts which appear makes some comment appropriate." The question which the New Jersey court did not find it necessary to decide is squarely presented here.

The Pennsylvania statute, the constitutionality of which is involved here, is not a mere custodial statute. It is an escheat statute and the decree below purports to vest title to the moneys involved exclusively in Pennsylvania. The power to take property by escheat, unlike the power to tax, necessarily can belong only to a single state. Appellant contends that, if any state has the power to escheat the moneys here involved, it is New York, the state of domicile of the only party to the transactions involved whose domicile is in evidence. Appellant is a corporation of the State of New York with its principal place of business located there and that state, although not a party to this proceeding, is claiming under its Abandoned Property Law (McKinney's Consolidated Laws of New York, Abandoned Property Law, § 1309) a substantial portion of the moneys affected by the decree below and may claim all of them (R. 46-47).

*Substantiality of Questions Involved.*

In addition, we submit that each of the states where negotiable drafts were delivered to payees has a more significant contact with the transactions than the Commonwealth of Pennsylvania, and on the reasoning of the Pennsylvania courts could take the same amounts as are taken in the case at bar. In the majority of transactions involved in this proceeding, the appellant issued negotiable drafts (R. 47). These drafts were drawn on banks outside Pennsylvania, were delivered to payees both outside and inside Pennsylvania, and were negotiable anywhere (R. 119, 137, 141). These payees as creditors of the appellant had and, so far as the evidence shows, still have in their possession personal property as defined in Section 27 of the Act of 1889, as amended (27 Purdon's Statutes § 111), that is, "negotiable instruments, . . . instruments of indebtedness not under seal," or "choses in action." In this proceeding no attempt has been made to declare an escheat as to these instruments or choses in action, no doubt for the reason that these drafts were delivered to the payees not only in Pennsylvania but in every state of the Union and in foreign countries. Even as to payees who received drafts at offices of the appellant in Pennsylvania there is no showing and there can be no basis for presuming that they were residents of Pennsylvania at the time of receipt. As to these instruments, there is certainly no property subject to the control of the Commonwealth.

The only other category of transactions involved in this case is that in which a negotiable draft was not delivered to the payee. In these instances Western Union either made a refund to the sender by delivering to him a negotiable draft which the sender never cashed (R. 117), or Western Union was unable to locate the

*Substantiality of Questions Involved.*

sender in order to make a refund, in which case the sender would have as evidence of Western Union's debt to him the receipt which he was given at the time of sending the money order (R. 135). In these instances, therefore, there is still outstanding, so far as the evidence shows, an instrument or chose in action representing the debt or claim within the meaning of the Act. As in the case of payees, there is no evidence to show and there can be no presumption that these senders were residents of Pennsylvania at the times they entered the offices of the appellant to send money order messages. These instruments which were delivered to the senders, therefore, are not within the control of the Commonwealth of Pennsylvania.

The Supreme Court of Pennsylvania reasoned that the amounts claimed in the petition were "within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the Courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the *res*, which is the subject of the escheat." (R. 156; App. A, 54) The Court then discussed *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U. S. 541, and *Standard Oil Co. v. New Jersey*, 341 U. S. 428, as sustaining this conclusion. But the very question now under discussion was left open in the *Connecticut Mutual* case, namely, whether a state has the power to escheat where the transactions involved were between nonresidents of the state and a foreign corporation. And the *Standard Oil* case has no applicability, because the facts here are the reverse of the facts in that case. Here the appellant is not a domestic corporation, as in the *Standard Oil* case, but

*Substantiality of Questions Involved.*

is a foreign corporation. The choses in action or instruments representing the debts or demands are not in the custody or possession of the appellant, but if anywhere they are in the custody or possession of the senders or payees of money orders or of holders by endorsement or assignment. No sender, payee or other holder has been shown to be or to have been at any time a resident of Pennsylvania.

The question as to a state's power of escheat involving nonresidents and a foreign corporation has never been decided by this Court, and until the decisions of the Pennsylvania courts in this case has never been decided by any court. The appellant contends that Pennsylvania does not have this power and that the Pennsylvania Escheat Act by causing an escheat of the amounts involved here has deprived the appellant of property without due process of law.

2. Appellant's second question is whether there is jurisdiction to cause escheat in this case though collection from appellant by other states and third persons of the same amounts which are sought in the petition for escheat cannot be barred.

The petition for escheat is directed solely to the money which was paid by senders but as to which appellant was unable either to make payment in money to the persons to whom the senders had instructed that payment be made or to refund the money to the senders. Section 27 of the Pennsylvania Escheat Act (27 Purdon's Statutes § 111), however, defines the terms real and personal property as used in the Act to "mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebt-

*Substantiality of Questions Involved.*

edness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible, or intangible, and all interests therein, whether legal or equitable." The Commonwealth of Pennsylvania in its petition for escheat did not designate anything other than the specific moneys paid by senders. The decree of the Supreme Court of Pennsylvania directs that a judgment of escheat be entered, not for such specific moneys, but for an amount equal to the moneys paid by senders. Both the petition and the decree, therefore, are limited solely to money. Consequently, the decree does not protect the appellant from possible future claims, since as a final judgment it precludes only another escheat proceeding by the Commonwealth of Pennsylvania for money; it does not escheat and cannot cut off and determine the "claims, debts, demands" of the senders, payees and other states and foreign countries. The statute, when construed to require the escheat of money covered by such claims, denies due process to the appellant contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, since it does not protect the appellant from future claims.

In answer to appellant's contention that it would be in jeopardy of escheat elsewhere than in Pennsylvania, particularly in New York, its state of domicile, the Supreme Court of Pennsylvania said that the full faith and credit clause of the Constitution gives it protection, citing *Standard Oil Co. v. New Jersey*, 341 U. S. 428. But as we have shown, the *Standard Oil* case is not in point since the corporation there was a domestic, not a foreign corporation, as here.

*Substantiality of Questions Involved.*

We have here, therefore, a substantial question. Appellant's fears of multiple escheat are not unfounded. We have already adverted to the claims of the State of New York under its Abandoned Property Law. A claim for similar monies was presented to appellant by Massachusetts under its abandoned property law, Massachusetts General Laws, Chap. 200A (R. 44-45). The ruling favorable to the defendant in *State of New Jersey v. Western Union Telegraph Co.*, 17 N. J. 149, 110 A. 2d 115 (1954), did not settle the question in that state. The statute there purported to cause the escheat of funds unclaimed for fourteen years; the court held that the state's claim to escheat was barred by the New Jersey six-year statute of limitations. But under another statute (N.J. Rev. Stat., Title 2A: 37-29 *et seq.*), the state may seek to cause the escheat of funds which have been unclaimed for five years, so that the six-year statute of limitations would not be a bar.

As set forth in the stipulation of facts (R.44), the states of Washington in 1955 and Arizona in 1956 enacted modified versions of the Uniform Disposition of Abandoned Property Act drafted by the National Conference of Commissioners on Uniform Laws in 1954. Section 9, the "omnibus" section of the act, applies to: "All tangible personal property, not otherwise covered by this act, \* \* \*." Since this case was commenced, modified versions of the act, all containing the substance of Section 9 thereof, have been acted in California (1959), Kentucky (1960), New Mexico (1959), Oregon (1957), Utah (1957) and Virginia (1960). Under most of these statutes the period of dormancy, the date for filing the report and the date for paying the monies to the state are the same. All provide penalties for non-compliance,



*Substantiality of Questions Involved.*

the only difference being in the severity thereof. Some of the monies involved in this case may also be subject to seizure under the abandoned property laws of Arkansas, Louisiana, Montana, North Carolina and Wyoming. For the convenience of the Court, attached hereto as Appendix C is a tabulation of the pertinent statutes of all the states referred to herein other than Pennsylvania.

3. Our third question is whether the notice by publication in this case pursuant to the Pennsylvania Escheat Act meets the requirements of due process. We have already pointed out that the petition for escheat asked solely for a money judgment equal to the amounts received by appellant in the money order transactions involved. There was, therefore, no seizure by the Commonwealth of Pennsylvania of any property defined in the Pennsylvania Escheat Act, and appellant contends that, since there was no seizure, notice by publication was not sufficient. Appellant further contends that the notice was invalid because the names and last known addresses of senders and payees, which were a part of the record in this case, were not set forth in the notice which was published and because there was no attempt to notify these senders and payees by mail.

The Supreme Court of Pennsylvania relied on *Security Savings Bank v. State of California*, 263 U. S. 282, to sustain the validity of the notice. There, however, the defendant was a bank which was a California corporation and had its only place of business in California. The petition for escheat was directed against deposits that were actually in the bank at its place of business. Since there was a seizure of deposits, publi-



*Substantiality of Questions Involved.*

cation by notice was held good as to depositors, the Court stating (at p. 287) :

“[T]he essentials of jurisdiction over the deposits are that there be *seizure of the res at the commencement of the suit*; and reasonable notice and opportunity to be heard.” (*Italics ours.*)

There was no such seizure here.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, the Court held that notice by publication which did not set forth the last known names and addresses of claimants, where those names and addresses were of record, did not meet the requirements of due process under the Fourteenth Amendment. In our case, as in the *Mullane* case, the last known names and addresses of certain of the claimants are of record (R. 20, 101). These names and addresses were not included in the published notice, and these claimants were not notified by mail.

Appellant also contends that the notice, describing the property sought to be escheated as “amounts refundable to senders,” was not sufficient to apprise payees and holders of the outstanding negotiable drafts that their rights and appellant’s obligations to them were also subject to escheat in the proceeding in which the notice was given. Furthermore, payees to whom money order drafts were issued outside Pennsylvania and who may never have been in that state at any time in their lives certainly should not be chargeable with knowledge of and put on notice by a Pennsylvania statute which had not even been enacted at the time when they received the drafts. Appellant contends, therefore, that the statutory notice was inadequate to afford due process under the Fourteenth Amendment.

*Conclusion.***CONCLUSION**

For the reasons stated, appellant respectfully submits that the questions presented in this appeal are so substantial as to require plenary consideration, with brief on the merits and oral argument, for their resolution.

Respectfully submitted,

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**APPENDIX A****Opinion of the Court of Common Pleas of Dauphin County**

Filed December 15, 1958.

**BY THE COURT:**

This is an escheat proceeding. The matter is before us on the petition of the escheator who was appointed by the Secretary of Revenue. The respondent has filed an answer, wherein it is denied that the property mentioned in the petition is escheatable.

The petitioner seeks to escheat the moneys which were received at its offices and places of business in Pennsylvania for transmittal by telegraphic communication to respondent's places of business designated by the senders for payment to payees. It is averred in the petition that the respondent by money orders directed its paying offices at the points of destination to make payment to the payees named by the senders. The petition avers that the respondent agreed that if payment could not be effected within seventy-two hours after the receipt of these moneys at its paying offices, refund of the moneys deposited for the money orders would be made to the senders by the respondent; and that these moneys deposited have been unpaid and unclaimed for more than seven years.

The respondent contends that these moneys deposited in Pennsylvania are not escheatable because the defendant is a New York corporation and that there may be liability for escheat in that State and other States. It is contended also that the escheat of these moneys would be in violation of due process of law because the respondent would not be protected against multiple liability in other States to which these money orders were sent. It is contended that the escheat of

*Opinion of Court of Common Pleas of Dauphin County.*

these moneys would be unconstitutional, as impairing the obligation of contracts, and that there is a violation of due process because the notice that was given of the hearing in this matter was inadequate.

This matter came on for hearing on May 19, 1958, in Court Room No. 4, pursuant to an order of the Court fixing the hearing for that date. The escheator and the respondent appeared at that hearing by counsel. Depositions were taken. These depositions were supplemented by stipulations which were put into the record by agreement of both parties. These stipulations we believe contain those facts that are essential to the disposition of this case, and we adopt the stipulations as our factual findings in this matter. And since there is no dispute in the testimony taken at the hearing, we accept also the depositions as our findings in this case. While we accept all of this testimony as our factual findings, we herein state the facts in this case which we feel are of particular significance and accordingly make the following

**Opinion****FINDINGS OF FACT**

1. The respondent is a New York corporation.
2. Moneys were deposited by the senders at offices of the respondent in Pennsylvania.
3. There were thousands of transactions.
4. These transactions have been referred to as money orders.
5. Each sender deposited moneys with the understanding that the respondent would transmit a tele-

*Opinion of Court of Common Pleas of Dauphin County.*

graphic/communication to another of its offices designated as the paying office where the amount deposited, less charges, would be paid to a designated payee.

6. Prior to December 31, 1946, a total of \$6,139.68 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.

7. Prior to December 31, 1946, a total of \$615.81 (Commonwealth's Exhibit No. 4) was deposited with Postal Telegraph, Inc., to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed.

8. Payments were to be made to payees at the destinations specified by senders.

9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,755.49, all of which is unclaimed.

10. Prior to December 31, 1946 there was deposited with The Western Union Telegraph Company for transmission by telegraphic communication to destinations outside of Pennsylvania the sum of \$31,547.97 (Commonwealth's Exhibit No. 4), which sum was to be paid to the payees named in the money orders at the respondent's offices of destination, all of which is unclaimed.

11. Prior to December 31, 1946, there was deposited with Postal Telegraph, Inc., the sum of \$2,305.85 (Commonwealth's Exhibit No. 4) to be forwarded by money order to destinations outside of the State of Pennsylvania, all of which is unclaimed.

*Opinion of Court of Common Pleas of Dauphin County.*

12. The total sums deposited prior to December 31, 1946 with the two companies by senders of money orders to be paid at destinations outside of the State amounted to \$33,853.82, all of which is unclaimed.

13. From January 1, 1947 to December 31, 1948, money orders totalling \$1,349.80 (Commonwealth's Exhibit No. 4) were purchased from respondent by senders for delivery to payees at destinations in Pennsylvania, and \$4,280.73 was deposited by senders of money orders in Pennsylvania for delivery to payees outside of the State of Pennsylvania, all of which is unclaimed.

14. The respondent, the said Western Union Telegraph Company, a New York corporation, merged with Postal Telegraph, Inc., a Delaware corporation, on or about October 7, 1943.

15. The New York corporation, respondent herein, was the surviving corporation and assumed all the obligations of the merged corporation, Postal Telegraph, Inc., and its subsidiaries.

16. At the respondent's offices in Pennsylvania, the cash received on account of the purchase of money orders was co-mingled with daily receipts.

17. The surplus of these daily receipts in Pennsylvania over expenditures was deposited in local banks, and from time to time excess funds remitted to the respondent's out-of-state depositaries. Money orders were drawn on these depositaries.

18. It is not shown, however, that funds for the payment of money orders were earmarked and set aside from the general funds of the respondent on deposit anywhere.

*Opinion of Court of Common Pleas of Dauphin County.*

19. The respondent contracted with persons purchasing money orders that if payment was not made to the payees at the point of destination within seventy-two hours, the sums deposited by the senders would be refunded.

20. Such refunds were to be made at the point of origin, i. e., the point where the senders purchased the money orders in Pennsylvania.

21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$46,239.84 (Commonwealth's Exhibit No. 4), all of which sum is held by the respondent and remains unpaid as well as unclaimed.

### DISCUSSION

It has been held with respect to an escheator's petition that it is "the duty of a petitioner for escheat 'clearly to aver a case within some act or acts of assembly'"; Escheat of \$92,800, 361 Pa. 51, 57 (1949); Commonwealth ex rel. Reno et al. v. Pennsylvania Co., Etc., 339 Pa. 513, 516 (1940). And the procedure provided for in the statute invoked must be pursued: Rosenfeld's Appeal, 337 Pa. 183, 187 (1940).

The petition is brought under the Act of May 2, 1889, P. L. 66, as last amended by the Act of July 29, 1953, P. L. 986. Petitioner by his petition has proceeded in accordance with the provisions of this statute. As entitling the State to escheat the moneys held by the respondent, the escheator invoked § 3 of the Act of 1889, as amended by the Act of 1953, 27 P. S. 333, defining by the amendment escheatable property, inter alia, as follows:



"Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

Are the moneys on deposit with the respondent in this State represented by unpaid money orders which have been unclaimed for more than seven years escheatable in Pennsylvania? The deposits were made in numerous localities throughout the Commonwealth, the respondent having contracted to refund the moneys in this State to the senders if payment was not made within seventy-two hours to the payees named in the money orders.

"A legislative provision for escheat is a valid exercise of the police power of the State: \*\*\*\*." The State has jurisdiction "over intangibles and \*\*\*\* power to subject them to escheat even as against possible non-resident owners": Philadelphia Electric Company Case, 352 Pa., 457, 463, 464 (1945).

*Opinion of Court of Common Pleas of Dauphin County.*

In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), it was held that regardless of theories as to their situs, stock certificates and undelivered dividends, whose owners have been unknown or have made no claim thereon for fourteen successive years, may be escheated by the domiciliary State of the corporation (New Jersey), even as against holders of stock and dividends whose last known addresses were chiefly in other States and foreign countries.

These two cases last cited stand for the proposition that the State has power to escheat intangible property held by a corporation in the State of domicile, and emphasize the power of the State to seize ownerless property even as against possible nonresident owners. There is involved in the instant case, however, not the question of the State's jurisdiction over unclaimed property held by a corporation domiciled here where possible non-residents may be affected. We are concerned in this case with the question of jurisdiction of this State over property held in the State by a corporation domiciled in another State. This proceeding involves (a) money held in Pennsylvania by the respondent, a New York corporation; (b) the depositors of money (the senders of money orders) who have made no claim for the refund of their deposits; and (c) other possible unknown claimants—payees or others who may have any interest in the uncashed money orders. Some of the payees named in the money orders were in Pennsylvania, while others were outside of this State. All the senders were in Pennsylvania.

The res involved here is the debt or demand of the State because of moneys deposited within this Commonwealth to pay money orders which have been unpaid and unclaimed. Funds are on deposit here in local banks.

In *Security Savings Bank v. State of California*, 263 U.S. 282 (1923), the Supreme Court, in dealing with the question of the right of the State of California to escheat unclaimed deposits in savings banks, stated at page 285:

"The unclaimed deposits are debts due by a California corporation with its place of business there. \* \* \* The debts arose out of contracts made and to be performed there. \* \* \* Thus the deposits are clearly intangible property within the State. Over this intangible property the State has the same dominion that it has over tangible property."

We are here dealing with the seizure and forfeiture in Pennsylvania of intangible property held by a New York corporation within the dominion of this State, whereas in the *Security Savings Bank* case, the *Philadelphia Electric* case, and the *Standard Oil* case, the courts in each instance were considering the question of the escheat of intangible property held by a corporation in its State of domicile.

We think the language of the Supreme Court in the *Security Savings Bank* case throws considerable light on the nature of an escheat proceeding and we quote in part therefrom at pages 286-287-288:

"The proceeding is not one in personam — at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles gar-

*Opinion of Court of Common Pleas of Dauphin County.*

nishment. In substance it is like proceedings in escheat, \* \* \*; for confiscation, \* \* \*; for forfeiture, \* \* \*; for condemnation, \* \* \*; for registry of titles, \* \* \*; and libels for possession brought by the Alien Property Custodian, \* \* \*. These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard. \* \* \* There is a seizure or it equivalent. \* \* \* Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants.

"Seizure of the deposit is effected by the personal service made upon the bank. \* \* \* Thereby the res is subjected to the jurisdiction of the court. \* \* \* The fact that the claim of the State to the deposit may be defeated by the appearance of the debtor or other claimant does not, as argued, prove that the deposit was not seized."

It seems to us that the petition for escheat, when served upon the respondent, must have had the same effect as the suit instituted by the Attorney General in the State of California in the Security Savings Bank case. The escheat petition is clearly directed against the funds of the defendant located within this Commonwealth. We are aware that it has been held that intan-

gible property held by a corporation has its situs in the State of incorporation for purposes of taxation: *Commonwealth v. Schuylkill Trust Company*, 327 Pa. 127 (1937). We think the important factor in the instant case is not situs but rather the dominion of the res. The property here to be escheated—respondent's deposits in Pennsylvania banks—"is a part of the mass of property within the state whose transfer and devolution is subject to state control": *Standard Oil Co. v. New Jersey*, 341 U. S., *supra*, at 438, 441.

Escheat proceedings involve the forfeiture to the State of particular and identified ownerless property. The many statutes on the subject define and specify the particular property that is escheatable. And implicit in the decisional law on the subject we believe is the requirement that the escheator must deal with a defined res. Escheat of \$92,800, 361 Pa., *supra*; Philadelphia Electric Company case, 352 Pa., *supra*; Pennsylvania Power & Light Company case, 352 Pa. 466 (1945); *Commonwealth ex rel. Reno, et al. v. Pennsylvania Co., etc.*, 339 Pa., *supra*; *Rosenfeld's Appeal*, 337 Pa. *supra*; *In Re Escheat of Moneys in Custody of United States Treasury*, 322 Pa. 481 (1936); *Germantown Trust Co. v. Powell*, 285 Pa. 71 (1919); *Commonwealth v. Dollar Savings Bank*, 259 Pa. 138 (1917); *Alton's Estate*, 220 Pa. 258 (1908); *Cunnius v. Reading School District*, 206 Pa. 469 (1903). These are but a few of the cases dealing with the subject of escheat, but they are sufficient to show that proceedings are had against particularly identified property, frequently moneys, deposits, securities or other liquid funds.

While this case presents questions differing in some aspects from the problems decided by this Court in

*Opinion of Court of Common Pleas of Dauphin County.*

Frank B. Murdoch and Leo Weinrott, Escheators of the Commonwealth of Pennsylvania v. Pennsylvania Railroad Company, 257 Commonwealth Docket 1954 (not yet reported), Judge Kreider's exhaustive opinion in that case interprets the Act of 1889, as amended by the Act of 1953, and should be read by all persons interested in the subject of escheat as being a comprehensive consideration not only of the application of the Act, as amended, but constitutional aspects of the statute as well.

Not only is the res involved herein within the domain of Pennsylvania, but the circumstances under which that res came into existence are of particular importance. As a matter of contract, when the deposits were made, money orders that were not cashed within seventy-two hours by the payees were to be refunded to the depositors. This was an express contract which called for its execution within this State. The name and address of each sender was noted on the application form at the point where the money was sent. There were thousands of transactions involving sums in various amounts. The transactions concerning the deposits and the agreements for refund all occurred within this State. Pennsylvania's contact with these many transactions and its dominion over the funds here on deposit should entitle this State to escheat the unclaimed sums that were deposited for money orders.

Our attention has been called to a decision by the Supreme Court of the United States—Connecticut Mutual Life Insurance Co., et al. v. Moore, 333 U.S. 541 (1948). That case involved an interpretation of the New York Abandoned Property Law, which, inter alia, pro-



vided that moneys held or owing by any life insurance corporation, which shall remain unclaimed for seven years by the persons entitled thereto, shall be deemed abandoned property. In a declaratory judgment proceeding, nine insurance companies, incorporated in States other than New York, sought in the Supreme Court of New York a declaration of the invalidity of the Abandoned Property Law as applied to moneys held or owed by these insurance companies. The New York Courts held such moneys to be subject to escheat. The Supreme Court of the United States, in affirming the judgment of the Court of Appeals of New York, held that New York had the power to take over these abandoned moneys in the hands of the foreign insurance companies. The majority of the Court was of the view that the State of New York had such contacts with the transactions involving the insurance policies in question as to entitle the State to escheat the proceeds of the policies which remained unclaimed. There were three dissents, Justices Frankfurter, Jackson and Douglas, which were occasioned in some measure at least because of the dissatisfaction of the dissenting Justices with the procedure by which the questions were brought before the Court. These dissenters felt that the general declaration of the validity of the law, and that accordingly New York had power to take over the abandoned moneys in the hands of foreign corporations, was not a sufficient answer to many of the problems that would arise under the New York law, and that, therefore, there should be no adjudication in the matter until cases were presented containing justiciable issues in a more concrete form.

We are inclined to the view that there is an issue involved here that is sufficiently defined as to satisfy the



*Opinion of Court of Common Pleas of Dauphin County.*

requirements of the dissenting Justices as outlined in the Connecticut Mutual Life Insurance case. And we believe also that the Connecticut Mutual case clearly establishes Pennsylvania's right to escheat in this case the funds within its jurisdiction.

It should be observed that Mr. Justice Frankfurter, in the Connecticut Mutual case, stated at page 554: "For all we know there are no funds in New York to which that State could lay claim even within the circumscribed affirmance by this Court of the New York judgment." The deposit of funds within the jurisdiction of the State differentiates the instant case from the abstract declaration of law sought and obtained by the insurance companies in the Connecticut Mutual case. The funds deposited here, even though in local banks for current purposes, give this State an important contact with the ownerless property involved herein.

In our judgment, when ownerless property held by a foreign corporation is within the dominion of this State, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has had extensive contact with the transactions by which the res was created. The rationale of the decisions herein cited points to this as being the correct conclusion.

There is no constitutional objection to the escheat of the moneys held by the respondent. Most of the questions raised by the respondent as constitutional objections have been decided against the respondent in *Standard Oil Co. v. New Jersey*, 341 U.S., *Supra*. The respondent has argued that the statutory escheat of

these moneys takes its property without due process of law because it is not protected from claims by New York and other States.<sup>1</sup> If the respondent's debt, represented by these unclaimed deposits, is taken by a valid judgment in this State, the same debts or demands against respondent cannot be taken by another State. In the Standard Oil Company case, at page 443, the Supreme Court said:

"\* \* \* The Full Faith and Credit Clause bars any such double escheat. Cf. *Baltimore & Ohio R. Co. v. Hostetter*, 240 U. S. 620, 624, and cases cited, particularly *Harris v. Balk*, 198 U. S. 215, 226."

And continuing, the Court stated:

"\* \* \* The claim of no other state to this property is before us and, of course, determination of any right of a claimant state against New Jersey for the property escheated by New Jersey must await presentation here."

It seems to us that this case affords a complete answer to the contention that New York might escheat these moneys. The claim of New York is not before us, and surely this escheat proceeding should not abate, because of some claim that may or may not in the future be presented. When and if proceedings in this matter are brought within the jurisdiction of a higher tribunal, the claims of other States may be duly adjudicated therein.

In connection with due process, the respondent complains that the notice to any claimants was insufficient.

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1. Although respondent asserted ownership of the funds in question in its answer, that position was abandoned in its brief and oral argument.

*Opinion of Court of Common Pleas of Dauphin County.*

Section 8 of the Act of 1889, as amended, 27 P. S. 43, as to notice, provides that—

“\* \* \* and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.”

The statute does not spell out the extent of the notice required, and in conformity with this provision in the statute the Court ordered publication one time in a newspaper of general circulation in Philadelphia, Pittsburgh and Dauphin County, all publications to be at least twenty days prior to the date fixed for hearing. We also directed that notice be published in the office of the Prothonotary of this Court.

The petition for hearing recited that—

“Notice of the filing of the Petition for Escheat and of the time and place fixed for hearing thereon, cannot be served upon the persons entitled to payment of the sums set forth in the Petition because the whereabouts of the senders or other persons entitled thereto have been unknown for more than seven years and until the present time.”

The order which the Court made with respect to notice reads as follows:

“\* \* \* it is ORDERED that a hearing upon the Petition for Escheat and Answer thereto filed in the above entitled matter be fixed for Monday, the 19 day of May, 1958, at 10 o'clock a.m., in the Court of Common Pleas of Dauphin County in the Court House, Room 4, Harrisburg, Pennsylvania, and that

notice of the filing of the Petition for Escheat, and of the time and place fixed for hearing thereon, be served upon all persons claiming an interest in the property sought to be escheated by posting in the office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing."

We call attention to the Security Savings Bank case, as well as the Standard Oil case, where notice by publication was given. And in *Anderson National Bank, et al. v. Luckett, et al.*, 321 U. S. 233 (1944) at 244, the Supreme Court of the United States recognized as valid a statutory notice in an escheat proceeding which consisted of "the posting of a notice on the door of the court house in a Kentucky county"; and at page 243 the Court made this significant comment:

"The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled."

We must bear in mind also that by §22 of the Act of 1889, as amended, 27 P. S. 91, there is granted to every person without actual notice of the escheat proceedings, the right, at any time within three years after the adjudication, to traverse the adjudication by writing filed in the court which entered the adjudication and

*Opinion of Court of Common Pleas of Dauphin County.*

the issue thus raised must be tried in that court. In *Anderson National Bank, et al. v. Lockett, et al.*, 321 U. S., *supra*, involving the escheat of bank deposits, the Court said at page 245:

"\* \* \* The statutory procedure, so far as it affects depositors, is in the nature of a proceeding in rem, in the course of which property, against which a claim is asserted, is seized or sequestered, and held subject to the appearance and presentation of claims by all those who assert an adverse interest in it. In all such proceedings the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank v. Coler*, 280 U.S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure."

And in *Mullane v. Central Hanover Bank & Trust Co., Trustee, et al.*, 339 U. S. 306 (1950), in a proceeding involving trusts, with numerous parties as possible beneficiaries whose names and interests were not known to the Trustee, the Supreme Court said at page 317:

"This Court has not hesitated to approve of resort to publication as a customary substitute \* \* \* where it is not reasonably possible or practicable to give more adequate warning."

And at page 318, the Court continued:

"Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

See also *State v. American-Hawaiian S. S. Co.*, 101 Atlantic (2d) 598 (New Jersey—1953), holding, inter alia, that in the absence of requisite statutory requirements to satisfy procedural due process concerning notice, the Court under its inherent power could order such notice as would fulfill those requirements.

It is our conclusion, then, that there was no violation of due process in the notice that was ordered by the Court. Publication was the only practicable method by which service could be obtained as to persons who had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available.

Finally, the defendant asserts that the escheat of these moneys impairs the contract rights of the owners, and therefore violates Article I, §10, of the Federal Constitution which provides—"No State shall \* \* \* pass any \* \* \* Law impairing the Obligation of Contracts, \* \* \*." As we have stated, escheat statutes are enacted pursuant to the police power of the State: *Cunnius v. Reading School District*, 198 U. S. 458, 469 (1905). Again, we turn to the *Standard Oil* case as disposing of this contention. The Supreme Court commented on this point as follows at page 436:

"\* \* \* Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's



*Opinion of Court of Common Pleas of Dauphin County.*

statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property."

We are not persuaded that any significance should be attached to the method by which the respondent handled the sums deposited with it. The respondent did not segregate the moneys which were deposited with it over many years. These moneys were co-mingled with other daily receipts. The surplus from these daily receipts was deposited in local banks, and from time to time excess deposits were remitted to out-of-state fiscal agents.

The parties have not seen fit to stipulate the sums of money on deposit in Pennsylvania, but that there have been funds here from time to time is shown by the stipulation, and presumably there are now funds on deposit here in connection with the extensive business carried on by the respondent in this State. Nor do we think it is significant that money orders were drawn on out-of-state depositories for the payment of money orders. The important fact is that there are funds in Pennsylvania and these funds are subject to the dominion of this State for purposes of escheat. It would have been helpful to have had further testimony concerning the extent and location of the funds in this State. Absent such evidence, however, we must rely on the agreement of the parties that funds are here in the course of respondent's business.

Under the facts in this case, we are dealing not merely with sums deposited in Pennsylvania with the respondent, but we are concerned also with deposits



made with Postal Telegraph, Inc., the merged company. This fact further tends to establish Pennsylvania jurisdiction to escheat these moneys, since Postal went out of existence leaving in Pennsylvania debts which were incurred here to unknown claimants. These debts, as we have pointed out, created the res which is essential to any escheat proceeding. It is doubtful indeed in our minds that the assumption of Postal's liability by the respondent could be considered as the res in any escheat proceeding in New York.

There has been introduced by agreement Commonwealth's Exhibit No. 4 which contains schedules of unpaid money orders. Included in the schedules in this exhibit is Schedule "C" which relates to money orders originating outside of the State and sent to destinations in Pennsylvania. We have not considered this schedule in any way. It is not included within the averments of the petition for escheat. Although we do not decide the matter now, there is a serious doubt in our mind as to whether we have dominion over the accounts created out of the State in this manner and referred to in Schedule "C" of Commonwealth's Exhibit No. 4.

There is one item of which we should take note. It is set forth that \$725.85 has already been escheated to New York and payment of that amount has been made. We take this opportunity of stating that we do not recognize New York's authority to escheat that money, but since it has been done we have no jurisdiction over this sum.

We, therefore, adjudge that the sums deposited at points in Pennsylvania for the purchase of money orders which were never paid to the payees at the points of

*Opinion of Court of Common Pleas of Dauphin County.*

destination are escheatable regardless of whether those points of destination were within or without the State of Pennsylvania. In view of the foregoing, we make the following

CONCLUSION OF LAW

1. The sum of \$45,513.99 now held by the respondent is escheatable in Pennsylvania.

DECREE

AND NOW, December 15, 1958, in this proceeding it is directed that judgment of escheat be entered in favor of the escheator and against the respondent in the sum of \$45,513.99, unless exceptions are filed hereto within thirty (30) days.

WILLIAM H. NEELY  
J.

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**Opinion of the Court of Common Pleas of Dauphin County**

Filed July 6, 1959.

**BY THE COURT:**

The respondent has filed fourteen exceptions to this Court's opinion of December 15, 1958. Exceptions one through eleven relate to the nature of the money order transactions as characterized by the Court in certain Findings of Fact. Exception twelve relates to our findings as to the total amount of unpaid money orders which the Court found to be \$46,239.84. The thirteenth exception is to our first Conclusion of Law that \$45,513.99 is escheatable by the respondent in Pennsylvania, and the fourteenth exception is to the decree of the Court which directed judgment of escheat to be entered in this latter amount.

The respondent argues that " \* \* \* the Court finds that senders 'deposited' money in the offices of the Respondent in Pennsylvania"; that "these sums were to be 'transmitted', 'forwarded', 'paid', or 'delivered' to payees"; and contends that "These Findings, \* \* \* describe the money order transaction as being one consisting of the deposit of money and the transmittal or delivery of that money"; and further contends that "This is not in accord with the facts of record."

The Court in its Findings has merely described the money order transactions in the same manner as did the respondent by its own rules and regulations, its transmittal forms, its applications for money orders, and in other documents, all of which were offered by the respondent as exhibits and admitted into the record in this case. A limited reference to some of the language used in the respondent's exhibits supports the Court's

*Opinion of Court of Common Pleas of Dauphin County.*

Findings with respect to the nature and character of these transactions.

These were admitted in evidence (respondent's Exhibits Nos. 2 to 8 inclusive) respondent's regulations governing its telegraphic money order service as filed with certain governmental agencies. Respondent's Exhibit No. 2 states that these regulations are " \* \* \* instructions \* \* \* for the information and guidance of the employees and agents of this company in the acceptance, transmission and payment of Money Transfers." This Exhibit set forth, inter alia, the charges for transfer of money. For example, it provides that "The transfer charges for a transfer of \$125.00 will be 85c. for \$100.00, plus 25c. for the additional \$25.00, total \$1.10."

Exhibit No. 3 refers to "Money for transfer to another point." This same Exhibit, after detailing the transfer charge for specified sums of money, sets forth an additional charge for transmitting messages. The Exhibit provides that "The word 'sender' indicates the person sending the transfer and the word 'payee' the person to whom the money is to be paid." The same Exhibit also provides that "If cash is desired the payee of a transfer, or the sender in case of a refund, will be required to sign the back of the draft." The same Exhibit contains a sample money transfer application form which says: "Amount of transfer principal expressed in words and written out in full." Such amount of transfer principal can amount to nothing more than a deposit of money as characterized by the Court in its opinion, which money was deposited for transfer to the payee at the designated destination. Exhibit No. 4 contains a similar sample money transfer form and also other

*Opinion of Court of Common Pleas of Dauphin County.*

language similar to that already mentioned in other Exhibits.

Exhibit No. 5 contains the following sample form "Refund Notice":

"Buffalo, N. Y., Sept. 4, 1925  
To Richard Brown  
7th & Walnut Sts.

The sum of money deposited by you on Sept. 1, 1925 for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our office at 5 South Division St., it will be refunded upon presentation of satisfactory evidence of identity."

Thus, the respondent in its own refund notice makes reference to the deposit of moneys for transmission.

Exhibit No. 6 contains a number of specimen forms, including a transmittal form for delivery of a draft or supplemental message, or both, which states: "The Money Order paid you herewith is from William J. Smith at Philadelphia Penn"—with a supplemental message. The same Exhibit contains a specimen "Caution" order which says: "We have received a telegraphic money order for you \* \* \*." There is another form "Notice To Sender Of Undelivered Money Order" which provides: "Your money order of \* \* \* cannot be paid \* \* \*. The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime."

Exhibit No. 7 contains this notation: "In the case of a foreign order the foreign equivalent of the sum named in the order will be paid at the rate of exchange established by the Company or its agents on the date of the transfer"; and also contains the provision that "The

*Opinion of Court of Common Pleas of Dauphin County.*

amount of the order must be written out in words in the proper place on the application form."

Exhibit No. 8 provides as follows:

"Money orders that remain unpaid at the expiration of seventy-two hours from receipt, exclusive of Sundays and holidays, shall be cancelled \* \* \* and the originating office so notified by service message, stating the reasons for cancellation."

We have by no means exhausted the pertinent language of the numerous Exhibits. That which we have quoted is clearly sufficient to support our conclusion that the Court has properly characterized the transactions in question in the Findings of Fact which are the subject of the respondent's first eleven exceptions.

The respondent complains that some implication of a trust relationship arises in these money order transactions as described by the Court in its Findings of Fact. The Court by its Findings does not intend to make any implication as to whether the money order transactions created a trust relationship or a debtor-creditor relationship. It was not essential to the Court's disposition of this case to determine this relationship since in our view we would have reached the same result regardless of the relationship.

It was agreed in paragraph nineteen of the stipulation of facts that two items totaling \$25.72 have been paid and are not therefore involved in this proceeding. Findings of Fact Nos. 6 and 9, therefore, should each be reduced in the amount of \$25.72. Finding of Fact No. 6 should read:

*Opinion of Court of Common Pleas of Dauphin County.*

"6. Prior to December 31, 1946, a total of \$6,113.96 (Commonwealth's Exhibit No. 4) was deposited with The Western Union Telegraph Company to be transmitted to Pennsylvania destinations and has been unpaid as well as unclaimed."

And Finding of Fact No. 9 should read as follows:

"9. The total sums transmitted prior to December 31, 1946 by The Western Union Telegraph Company and Postal Telegraph, Inc., to be paid at Pennsylvania destinations, amounted to \$6,729.77, all of which is unclaimed."

Both parties agree that unpaid money orders between January 1, 1947 and December 31, 1948 in Schedules A and B on the first page of Commonwealth's Exhibit No. 4, totaling \$5,630.53, should be eliminated from this case. This is pursuant to the stipulation mentioned on page eight of the notes of testimony. And both sides have agreed that the sums referred to in Finding of Fact No. 13 in that total amount should be eliminated from this case.

There should then be eliminated from further consideration the item of \$25.72 mentioned in Findings 6 and 9. And there should also be eliminated the sum of \$5,630.53 mentioned in Finding 13. Finding of Fact 21, then, instead of being \$46,239.84, should reflect the deduction of the two items above mentioned totaling \$5,656.25, and that Finding then should read as follows:

"21. The total amount of the unpaid money orders sent from points in Pennsylvania to points of destination in and out of Pennsylvania is \$40,583.59 (Commonwealth's Exhibit No. 4), all of which sum



*Opinion of Court of Common Pleas of Dauphin County.*

is held by the respondent and remains unpaid as well as unclaimed."

The Court's first Conclusion of Law should read as follows:

"1. The sum of \$39,857.74 now held by the respondent is escheatable in Pennsylvania."

In answer to the respondent's fourteenth exception, we take occasion to point out that the amount for which judgment of escheat shall be entered is \$39,857.74. Both parties have in their briefs and at the oral argument of respondent's exceptions stated that the Findings should be modified to the extent hereinabove set forth.<sup>1</sup>

1. In its brief in support of its exceptions to Findings of Fact and Conclusions of Law, the respondent makes the following statement:

"In paragraph 19 of the Stipulation of Facts it was stipulated that two items appearing in Schedule A of Exhibit A, totaling \$25.72, have been paid since the date of the compilation of the exhibit. Therefore, the total amounts stated in Findings of Fact 6 and 9 should be reduced by \$25.72, so that these total amounts are, respectively, \$6,113.96 and \$6,729.77.

"At the time of the hearing in this case it was stipulated that money orders for the period January 1, 1947, to December 31, 1948, (see page 8 of the notes of testimony), were eliminated from the case, for the reason that since Petitioner had not filed with the Prothonotary the exhibits listing these transactions there could be no notice as to them. The amounts set forth in Finding of Fact 13, therefore, totaling \$5,630.53, should be eliminated.

"In order to reflect the above eliminations, Finding of Fact 21 should be reduced by the amount of \$5,656.25, so that the amount appearing in Finding of Fact 21 should be \$40,583.59 instead of \$46,239.84. Like-

*Opinion of Common Pleas Court of Dauphin County.*

We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent argued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage in the proceedings. However, we have reconsidered all of the respondent's rearguments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958. We find no occasion to depart from the disposition which we have already made of the respondent's contentions. All of them are fully considered in the Court's opinion of December 15th. In view of the foregoing, we herewith enter the following

**Final Decree**

AND NOW, July 6, 1959, respondent's exceptions Nos. 1, 2, 4, 6, 7, 8, 10, 11 and 14 are herewith overruled. Findings of Fact Nos. 6, 9, 13 and 21 (exceptions Nos. 3, 5, 9 and 12), and the Court's first Conclusion of Law (except-

wise, in order to reflect these eliminations in the figure in the Conclusion of Law and in the Decree at page 18 of the Court's Opinion, the figure should be \$39,857.74 instead of \$45,513.39." (parentheses supplied)

The petitioner in his brief contra the respondent's exceptions states:

"The respondent has correctly stated that certain items have been eliminated from this case by Stipulation of Counsel, and that the amounts set forth in the Findings of Fact should be reduced; and that, accordingly, the amount appearing in Finding of Fact No. 21 should be \$40,583.59, and the amount in the Conclusion of Law and in the Decree, at page 18, should be \$39,857.74."

*Opinion of the Supreme Court of Pennsylvania.*

tion No. 13) are herewith modified as herein set forth. It is directed that judgment of escheat be entered in favor of the escheator and against The Western Union Telegraph Company in the sum of \$39,857.74.

(S) WILLIAM H. NEELY  
J.

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**Opinion of the Supreme Court of Pennsylvania**

Filed June 29, 1960.

MUSMANNO, J.

The Western Union Telegraph Company, which is a New York corporation, operates in Pennsylvania, as it does in all States of the Union. In the course of its business it collects money for transmission to other places by means of telegraphic money orders, that is to say, a sender deposits so much money at the sending office and the Western Union telegraphs to the office geographically closest to the address of the payee an order to pay the payee the amount specified by the payor. It sometimes occurs, however, because of the uncertainties of life, with its untoward happenings including accidents, earthquakes, fires, sudden removals, and even death, that the designated payee never gets the money telegraphed to him, in which event the sending Western Union office is so notified and it then pays the money back to the original depositor.

But unexpected happenings transpire even at the sender's end and, as a result of accident, earthquake, fire, or even death, the Western Union sending office is thus unable to return the money it had accepted for

*Opinion of the Supreme Court of Pennsylvania.*

transmission. What happens to this money after sufficient time has elapsed to warrant the assumption that the sender will never turn up to collect back his money? The Western Union Telegraph Company answers this question with the flat statement that it is entitled to the money.

If there were no declared law on the subject, some color of right would attach to the Western Union's claims because, in the absence of an established potentially-collecting owner, the possessor of property, through discovery, finding or otherwise, obviously can hold it against the world. However, there is no vacuum in the law for a situation of this kind. The Legislature of Pennsylvania has specifically provided that:

"(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled, has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.

"(c) Whensoever any real or personal property within or subject to the control of the Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth." (Escheat Act of 1889, May 2, 1889, P.L. 66, § 3) as amended by the Act of 1953, July 29, P.L. 986, § 1 (27 P.S. § 333).

*Opinion of the Supreme Court of Pennsylvania.*

Proceeding under this statute, the Commonwealth of Pennsylvania, through its Secretary of Revenue, appointed Sidney Gottlieb, Esq., of Pittsburgh, as Escheator to collect outstanding sums such as those involved in this case. Accordingly, on December 21, 1953, Mr. Gottlieb filed in the Court of Common Pleas of Dauphin County a petition for escheat of certain sums in the hands of the Western Union Telegraph Company which for seven years had remained unclaimed by their original owners. The Western Union Telegraph Company denied the right of the Commonwealth to escheat under the circumstances, and a hearing was scheduled in the court of common pleas. Before the hearing, however, the parties agreed on a stipulation of facts which was filed April 18, 1958. After due consideration of the agreed-on facts, assisted by arguments of the contending parties, the court on December 5, 1958, found for the Commonwealth in the sum of \$45,513.99, the amount in controversy. Western Union appealed.

The Western Union contests the lower Court's findings on three bases: (1) The Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process.

The respondent Western Union says in its brief that the petition for escheat is "directed solely to the money which was paid by the senders but as to which Western Union was unable either to make payment in money to the persons to whom the senders had in-

*Opinion of the Supreme Court of Pennsylvania.*

structed payment to be made or to refund the money to the sender," and then argues that "these sums of money are not in Pennsylvania." The respondent points out that it is not per se a financial institution; that it is a telegram-transmitting organization and that it did not at any time during the period covered by the petition in escheat, or at any time, have fiscal or sub-fiscal agencies in Pennsylvania.

It emphasizes that the money paid by the sender in any particular transaction was not held isolatedly from other moneys and was not earmarked as belonging to the particular person who had deposited it for transmission to another person. The money was placed in a cash drawer and there it intermingled with money collected for telegrams and with other receipts. Thus, the respondent submits, it is impossible for the Court to point its finger to any specific "money" and say that this is the money which a sender deposited and which now has been unclaimed for seven years.

This argument almost approaches a play in semantics. It would be difficult to find a more generic term than *money*. When a lender approaches a person to whom he made a loan a long time before and says to him: "I want my money back," he obviously does not ask for the specific greenbacks he put into the hands of the lendee. He will take any greenbacks, yellowbacks, coins, bank checks, or even promissory notes which, in their total value, will be the exact sum he turned over to the defaulting debtor. Thus, the Commonwealth here, in its petition for escheat, was not calling upon Western Union to search out the original coins and currency



*Opinion of the Supreme Court of Pennsylvania.*

deposited by the senders who have since vanished in the mysterious sea of Whereabouts Unknown. The Commonwealth asked for the fiscal equivalent of that money.

Western Union itself does not think of money in a specific sense. When a customer wishes to transmit a monetary sum by telegraph he fills out a Western Union form which includes such designations as "money transfers" and "message to be delivered with the money." No one assumes that by the phrase "money transfer", Western Union is expected to actually transport to the payee the coins and currency the customer places on the counter and for which he is handed a receipt.

The notice which is sent to the payee carries the sentence: "We have received a sum of money by telegraph for you." By the use of this language Western Union does not intend to suggest that the legal tender it is ready to pay over to the payee is the exchange-stained currency and travel-battered coins which came from the pocket of the sender.

The interpretation argued for by Western Union contradicts what the courts have often declared on the subject. The Supreme Court of the United States said in *Connecticut Mutual Life Insurance Company v. Moore*, 333 U.S. 541:

"The statutory reference 'to any moneys held or owing' does not refer to any specific assets of an insurance company, but simply to the obligation of the companies to pay it."

In *Newhard v. Newhard*, 303 Pa. 299, 301, this Court said:



*Opinion of the Supreme Court of Pennsylvania.*

"The word 'moneys' is a general term and may and often does include property other than currency."

The respondent also argues that the Commonwealth may not escheat "moneys" in its possession because it has issued drafts to payees and even to senders which are still outstanding, but the mere issuance of drafts does not constitute payment, since there is no agreement between the parties to that effect. *Levan v. Wilten*, 135 Pa. 61, 63; *Easton School District v. Continental Casualty Co.*, 304 Pa. 64, 71; *North Penn Iron Co. v. N.J. Bridge Co.*, 35 Pa. Superior Ct. 84, 85.

Thus, interpreting the Commonwealth's petition as seeking escheat of the unclaimed obligations held by Western Union rather than any specific moneys deposited by the senders and which Western Union no longer possesses, we inevitably come to the conclusion that the *res* of the escheat proceedings, is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the *res*, which is the subject of the escheat.

On this subject, the Supreme Court of the United States, in *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 439, said:

"Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation. . .

*Opinion of the Supreme Court of Pennsylvania.*

We see no reason to doubt that, where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can 'only arise from control or power over the persons whose relationships are the source of the obligations.' *Estin v. Estin*, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service."

It was held in that case that the domiciliary State of the corporation. New Jersey, could escheat its stock certificates and undelivered dividends even though the addresses of some of the owners were in other states and foreign countries.

The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania. As stated in *Connecticut Mutual Life Ins. Co. v. Moore*, 297 N.Y. 1, 9:

"The core of the debtor obligations of the plaintiff companies was created through acts done in

*Opinion of the Supreme Court of Pennsylvania.*

this State, and the ties thereby established between the companies and the State were without more sufficient to validate the jurisdiction here asserted by the legislature."

The Supreme Court of the United States, at 333 U.S. 541, affirmed this New York decision.

We find no error in the holding of the lower court that—

"When ownerless property held by a foreign corporation is within the dominion of this state, i.e., the res is subject to the State's control, Pennsylvania has the right to escheat the money, even as against the claims of the corporation's State of domicile, where the State has extensive contact with the transactions by which the res was created . . . ."

Then Western Union contends that it would be unjust to require it to give up the unclaimed moneys in its possession because it might be besieged later on by senders, payees, or holders in due course of outstanding drafts. This picture conjures up a fear without objective basis. The instant escheat proceedings have to do with moneys which have been vainly seeking their missing owners for at least seven years. Thus, outstanding drafts would be stale-dated and therefore not honored. In any event, stop payments could be issued against them. But, most important of all, no belated claims for outstanding moneys could overcome the finality of escheat proceedings even without personal service on interested parties. It must be emphasized that escheat proceedings are in rem and not in personam.

*Opinion of the Supreme Court of Pennsylvania.*

"The proceeding is not one in personam — at least, not so far as concerns the depositor. The State does not seek to enforce any claim against him. It seeks to have the deposit transferred. The suit determines the custody (and perhaps the ownership) of the deposit. The state court likened the proceeding to garnishment, and thought that it should be described as quasi in rem. In form it resembles garnishment. In substance it is like proceedings in escheat, . . . for confiscation, . . . ; for forfeiture, . . . ; for condemnation, . . . ; for registry of titles, . . . ; and libels for possession brought by the Alien Property Custodian. . . . These are generally considered proceedings strictly in rem. But whether the proceeding should be described as being in rem or as being quasi in rem is not of legal significance in this connection. In either case the essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard . . . There is a seizure or its equivalent. . . . Moreover, there is no constitutional objection to considering the proceeding as in personam, so far as concerns the bank; as quasi in rem, so far as concerns the depositors; and as strictly in rem, so far as concerns other claimants." (*Security Savings Bank v. California*, 263 U.S. 282.)

This decision puts into bold relief the irrefutable proposition that:

"Seizure of the deposit is effected by personal service made upon the bank . . . Thereby the res is subjected to the jurisdiction of the court . . ."

Thus, the seizure of the *res* constituted constructive notice on all involved parties. In *Hollingsworth v. Bar-*

*Opinion of the Supreme Court of Pennsylvania.*

*bour*, 29 U.S. 466, 475, the Supreme Court affirmed the lower court's statement that "The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice."

Moreover, in the instant case, there was a posting of the notice of the escheat proceedings in the office of the Prothonotary of Dauphin County and publication of the notice of the escheat proceedings in each of three newspapers of general circulation in the County of Dauphin, the City of Philadelphia and the City of Pittsburgh. These notices were directed "To all persons whatsoever claiming an interest in the personal property herein referred to" and stated that the "names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary (of Dauphin Co.)". The notices described the property sought to be escheated as consisting of "amounts held and owning by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees, the whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said moneys, having been and remained unknown for seven successive years, and the said moneys having been unclaimed for the said period of seven successive years."

The Western Union submits that this notice cannot apply to cases where the sender or payee has re-

*Opinion of the Supreme Court of Pennsylvania.*

ceived a draft which still remains unpaid, but, as already stated, the draft could not be regarded payment since there was no contract to that effect between the parties. Furthermore, the notice already quoted applies against third parties other than the sender, as witness the statement: "The whereabouts of the senders thereof, and of the owners or beneficial owners of or persons entitled to the said money."

Therefore, it is beyond refutation that all interested parties are on notice that publication of the indicated notice represents seizure of the *res* by personal service upon Western Union here in Pennsylvania. Nor does it matter that potentially interested parties are not residents of Pennsylvania. It is the very fact that their whereabouts are unknown and have been unknown for over seven years that builds the foundation on which the escheat action rests. We made this clear in *Philadelphia Electric Company* case, 352 Pa. 457: "The Supreme Court of the United States has confirmed the jurisdiction of a State court over intangibles and its power to subject them to escheat even as against possible non-residents."

Nor would Western Union need to fear that the moneys here involved would be subject to double escheat in New York, the State of its domicile. The decree of escheat here affirmed is naturally subject to the Full Faith and Credit Clause of the United States Constitution, as stated in *Standard Oil Co. v. New Jersey*, 341 U.S. 428: "The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the

*Opinion of the Supreme Court of Pennsylvania.*

same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

Decree affirmed, each party to bear own costs.

Mr. Justice Bell took no part in the consideration or decision of this case.



*Pertinent Pennsylvania Statutes.*

**APPENDIX B**

**Pertinent Pennsylvania Statutes**

Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333), subsections (b), (c) and (d):

“(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

“(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

“(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.”

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JAMES R. BROWNING, Clerk

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In The  
**Supreme Court of the United States**

October Term, 1960

No. ~~64B~~ 15

THE WESTERN UNION TELEGRAPH  
COMPANY,

*Appellant*

v.

COMMONWEALTH OF PENNSYLVANIA, BY  
SIDNEY GOTTLIEB, ESCHEATOR,

*Appellee*

*Appeal from the Supreme Court of Pennsylvania.*

---

**STATEMENT IN OPPOSITION TO APPEL-  
LANT'S JURISDICTIONAL STATEMENT, AND  
MOTION TO DISMISS OR AFFIRM**

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*Pertinent Pennsylvania Statutes.*

Act of May 2, 1889, P.L. 66, § 8 (27 Purdon's Statutes § 43), subsection (a):

"That whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction in the premises shall upon the filing of any account or statement by any administrator, executor, depository of the court, receiver or other officer of the court, or of any trustee or other person in a fiduciary capacity, of any property or estate, real or personal, escheated or supposed to be escheated, proceed to the audit and adjudication of said account or statement in the same manner as the said court commonly proceeds upon the audit and adjudication of the accounts of executors, administrators and trustees; and shall upon said audit, proceed to inquire and determine whether there has been any escheat or not, and if so, in what manner and for what cause said escheat has occurred, and also what estate, real or personal, has escheated, and what is the value thereof. And the said court shall, in all cases where any real estate has escheated or is alleged to have escheated, before proceeding finally to hear and determine the question of escheat, order and direct notice of said proceedings to be served upon the person or persons in possession of said real estate, in such form as the court shall direct, and the said court shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the escheator and all parties claiming to have any interest

*Pertinent Pennsylvania Statutes.*

in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

Act of July 29, 1953, P.L. 986, § 5 (27 Purdon's Statutes § 111), subsections (a) and (b):

"(a) The term 'real or personal property', as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

"(b) The term 'beneficial owner', as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property."

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*Abandoned Property Laws of Other States***APPENDIX C****Abandoned Property Laws of States Other  
Than Pennsylvania**

ARIZONA*	—	Ariz. R.S. Title 44-351 et seq.
ARKANSAS	—	Ark. Stat. 1947, Sec. 50-601 et seq.
CALIFORNIA*	—	Code Civ. Pro., Chap. 7, Title 10, Part 3, Sec. 1500 et seq.
KENTUCKY*	—	Ky. Rev. Stat., Chap. 393.
LOUISIANA	—	La. Rev. Stat., Title 9, Chap. 1, Sec. 151 et seq.
MASSACHUSETTS	—	Mass. Ann. Laws, Chap. 200A.
MONTANA	—	Mont. Rev. Code 1947, Sec. 91-502, as amended by Chap. 170, L. 1953; and Sec. 67-102(28).
NEW JERSEY	—	N. J. Rev. Stat., Title 2A:37-1 et seq.
NEW MEXICO*	—	N. M. Laws of 1959, Chap. 132.
NEW YORK	—	N. Y. Abandoned Prop. Law, Sec. 1309 et seq.
NORTH CAROLINA	—	N. C. Gen. Stat. 1952, Sec. 116-20 et seq.
OREGON*	—	Oregon Rev. Stat., Sec. 98.302-98.435 and 98.991.
UTAH*	—	Utah Code Ann., Title 78, Chap. 44.
VIRGINIA*	—	Va. Laws of 1960, Chap. 330.
WASHINGTON*	—	Rev. Code of Wash., Sec. 63.28.070 et seq.
WYOMING	—	Wyo. Comp. Stat. 1945, Sec. 22-203 et seq.

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\*Modified version of Uniform Disposition of Unclaimed Property Act.

## TABLE OF CONTENTS

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	PAGE
Statement in Opposition to Appellant's Jurisdictional Statement:	
Nature of the Case	1
Grounds of Appeal Set Up by Appellant	14
Statement of Grounds Making Against Jurisdiction	16
Motion To Dismiss or Affirm	31
APPENDIX:	
Pennsylvania Escheat Statute	32

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## TABLE OF CITATIONS

---

### CASES:

Anderson National Bank v. Lockett, 321 U.S. 233	21, 27, 30
City of Boston v. Jackson, 260 U.S. 309	18
Cox v. Texas, 202 U.S. 446	17
Curry v. McCanless, 307 U.S. 357	19
Dent v. West Virginia, 129 U.S. 114	27
Fleming v. Fleming, 264 U.S. 29	18
Hollingsworth v. Barbour, 29 U.S. 466	29
Hulbert v. Chicago, 202 U.S. 275	17
International Shoe Co. v. Barbour, 326 U.S. 310	19
King v. West Virginia, 216 U.S. 92	18
Leonard v. Vicksburg S. & P. Railroad Co., 198 U.S. 416	18
Louisville & N. R. R. Co. v. Woodford, 234 U.S. 46	17

MacDonald v. Oregon Navigation Co., 233 U.S. 665	18
Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306	28
Pennington v. Bank, 243 U.S. 269	21
Pennsylvania Railroad Co. v. Illinois Brick Co., 297 U.S. 447	17
Security Savings Bank v. California, 263 U.S. 282	21, 25, 28, 29, 30
Standard Oil Company v. New Jersey, 341 U.S. 428	8, 9, 20, 22, 23, 24, 25, 28, 29, 30
Tidal Oil Co. v. Flanagan, 263 U.S. 444	18
U. S. v. Klein, 106 Fed. 2nd 213	21
U. S. v. Klein, 308 U.S. 618	21
STATUTE:	
Pennsylvania Act, May 2, 1889, P. L. 66, as amended by Act of July 29, 1953, P. L. 986	3, 32



**STATEMENT IN OPPOSITION TO APPELLANT'S  
JURISDICTIONAL STATEMENT**

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**NATURE OF THE CASE**

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The appellant, The Western Union Telegraph Company, hereinafter referred to as "Western Union", is a New York corporation, authorized to do business in Pennsylvania, and operates in that State, as it does in all other States.

Part of Western Union's business is what it calls a "telegraph money order service". In the course of this service, it receives money from persons who wish to send the money to persons at other places, and transmits the money to the other persons by means of its telegraph money order service.

This transmission of money by telegraph money orders is conducted substantially as follows:

The person who wants to send the money comes to a Western Union office and fills out one of the latter's printed forms, variously denominated in the form as a "Money Transfer" or as a "Money Order". The sender then gives the clerk the amount to be sent, together with the amount of Western Union's charges. The printed form which the sender fills out states that if payment cannot be effected within a specified time (in most cases 72 hours, in all other cases 5 days or 10 days), the money order will be canceled and refund made to the sender. The refund does not include the amount of the company's charges.

### *Nature of the Case*

Upon receiving the amount of the money order from the sender, and the amount of its charge for the service, Western Union then telegraphs to its office geographically nearest the payee named in the money order, directing that office to make payment of the specified amount to the payee, and in most cases, payment is effected.

In a number of instances, however, payment of the moneys to the payees can not be effected, and the senders are entitled to a refund of the amount of their money orders. Sometimes refund to the sender can not be effected.

The appellant contended in the court below that because in many cases it issued drafts to the payee for the amount of the money order, or, in those cases where the payee could not be located, it issued drafts to the sender for the amount of the refund, its obligation on the money orders was discharged, even though the drafts themselves were not paid.

The Supreme Court of Pennsylvania stated that the drafts did not discharge the money order obligations, since there was no contract to that effect between the parties. (Opinion, Supreme Court of Pennsylvania, Jurisdictional Statement, App. A, pp. 54, 59.)

The present case relates to instances in which Western Union received moneys from senders at its places of business in Pennsylvania for transmittal to payees at other places, and not only was unable to effect payment to the payees, but was also unable to effect refund to the senders. More than seven years has elapsed since those senders have been entitled to the refund. During that time, the whereabouts of the persons entitled to the amounts of the

*Nature of the Case*

money orders have been unknown, and the said amounts have been unclaimed.

The Commonwealth of Pennsylvania instituted the within proceeding in the State Court for the escheat of these amounts to the Commonwealth.

The Pennsylvania Escheat statute, Act of May 2, 1889, P. L. 66, Sec. 3, as amended by the Act of July 29, 1953, P. L. 986 (Appendix 1, et seq.), provides for the escheat to the Commonwealth of any property "within or subject to the control of the Commonwealth", whenever the owner or beneficial owner of or person entitled to, such property, or the whereabouts of such owner, beneficial owner or person entitled, has been unknown for seven years, or the property has been unclaimed for seven years.

The statute provides for proceedings in escheat in a court vested with jurisdiction under the statute. It directs that the Commonwealth shall apply by petition to the court to hear and determine whether an escheat has occurred, that a copy of the petition be served upon the corporation or person by whom the property is held or owing, as respondent, and that the respondent shall, within twenty days after such service, file an answer to the petition.

The statute provides for a hearing, adjudication by the court, the right to any party in interest to file exceptions, and the right of appeal to the Supreme Court of Pennsylvania.

The statute also provides that the Court shall have full power, at any stage of the proceedings, to make such orders relative to advertisements and notices of the proceedings as shall best serve to inform and advise all persons having an interest or who may have an interest in the proceedings, of the pendency thereof.

### *Nature of the Case*

The Commonwealth's petition for escheat in this case named the appellant as respondent, recited the facts upon which the alleged escheat rested, and prayed the Court to hear and determine whether an escheat had occurred and enter a judgment or decree of escheat in favor of the Commonwealth.

Appellant filed an Answer, admitting the receipt of the moneys from senders in Pennsylvania, and averring that after it received the money from the senders in each instance, it telegraphed its office nearest the payee to deliver to the payee a negotiable draft, and that in many instances where the payee could not be located, it issued a negotiable draft to the senders for the refund, that in each instance in which a draft was issued, whether to payee or sender, it was always ready, willing and able to pay the draft, and in the cases where the sender could not be found, it was always ready, willing and able to issue a draft to the sender, and that after six years, any claim of the sender for repayment or for acceptance of the negotiable draft was barred by the Pennsylvania Statute of Limitations.

In addition to the answer on the merits, the appellant set up a number of other defenses, denying that the Commonwealth had any right under the law to a judgment of escheat. It asserted the following defenses:

(1) That only the State of New York, the appellant's State of incorporation, had the right and power to declare an escheat of any claims, debts and demands arising out of its telegraph money order business, and that the said claims, debts or demands were not within or subject to the control of the Commonwealth of Pennsylvania; that if the Pennsylvania statute purported to declare an escheat of such claims, debts or demands to Pennsylvania, the

*Nature of the Case*

statute was unconstitutional, in that it deprived the appellant of property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States of America;

(2) That the said claims, debts or demands were barred by the Pennsylvania Statute of Limitations;

(3) That in all instances where negotiable drafts were issued by the appellant to the senders or payees, the appellant thereby fully and completely paid the senders or payees;

(4) That in each instance where, at the time the money orders were sent, the senders or payees resided or were domiciled outside Pennsylvania, or where the senders or payees at that time resided or where domiciled in Pennsylvania, but subsequently changed their residence or domicile to another State, the appellant was or might be subject to multiple liability, because "the state or states of residence or domicile of the said senders or payees have declared or may declare an escheat of any claims, debts or demands of such senders or payees", and that a decree of escheat would deprive the appellant of property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States of America;

(5) That any claims, debts or demands which were the subject matter of the action were the property of the senders or payees of the money orders at their domicile, subject only to the jurisdiction of the State of domicile of the said persons;

(6) That the Act under which the proceeding was brought was contrary to the Constitution of Pennsylvania and the Constitution of the United States of America in

*Nature of the Case*

that it made no provision for due and proper notice to payees or senders of the money orders involved, and that the proceeding was likewise contrary to the Constitution of Pennsylvania and the Constitution of the United States of America, in that due and proper notice had not in fact been given to the senders and payees.

The trial court entered an order fixing a time and place for hearing, and in its order also directed that

“Notice of the time and place fixed for hearing be served upon all persons claiming an interest in the property sought to be escheated by posting in the Office of the Prothonotary of Dauphin County in the place where other notices required to be posted are customarily posted, and by publication one time in each of three newspapers of general circulation, one in the County of Dauphin, one in the City of Philadelphia, and one in the City of Pittsburgh, such notice to be not less than twenty (20) days before the time fixed for hearing.

“The notices shall be in substantially the following form: . . .”

The form included the following statement:

“The said Petition for Escheat is on file in the Office of the Prothonotary of Dauphin County, and is open to the examination of any party in interest.

“The names and last known addresses of the owners or beneficial owners of, or persons entitled to the said property, the nature and amount of such property are set forth in the records on file in the Office of the Prothonotary.”

*Nature of the Case*

Notice in the form required was posted and published, as directed by the Court.

Hearing was held at the time and place fixed for hearing, and proclamation was made to all persons having or who might have an interest in the subject-matter of the proceeding to appear and be heard. No claim was made at the hearing.

At the hearing, the appellant abandoned its plea of the Statute of Limitations. Nor did it press its defense that the escheat statute made no provision for due and proper notice to payees and sendees of money orders, but argued only that the notice which was given did not meet the requirements of due process.

After hearing, the trial court made findings of fact and a conclusion of law, and entered a decree directing that a judgment of escheat be entered in favor of the Commonwealth and against the appellant.

In its opinion (Jurisdictional Statement, App. A, 21-41), the court rejected the defense which the appellant had pressed at the hearing.

The court held that the res was within the domain of Pennsylvania, and subject to its control (Opinion of Court of Common Pleas, Jurisdictional Statement, App. A, p. 33), that the res was seized by the personal service in Pennsylvania of a copy of the petition upon the appellant, that the court acted in conformity with the statute in its order directing the notice by publication and posting, and that there was no violation of due process in the notice which was ordered and given. The court said:

“Publication was the only practicable method by which service could be obtained as to persons who



*Nature of the Case*

had any possible interest in these unpaid money orders. As a matter of fact, it was the only method available." (App. A, page 38)

The court said further that there was no impairment of contracts, quoting *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 436:

"Normally the obligor or holder and the obligee or owner of abandoned property would, as here, have no contractual arrangement between themselves for its disposition in case of the owner's failure to make claim. As the disposition of abandoned property is a function of the state, no implied contract arises between obligor and obligee to determine the disposition of such property. Consequently, there is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations here under examination, but only the exercise of a regulatory power over abandoned property."

The court held that the Commonwealth had the right to escheat the property, "even as against the claims of the corporation's State of domicile, where the State (Pennsylvania) has had extensive contact with the transactions by which the res was created" (App. A, 33).

The court said also that the Commonwealth could exercise its power of escheat even as against possible non-resident owners, citing *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (App. A, 27).

The court rejected the appellant's argument that if a decree of escheat were entered, the appellant would be subject to multiple liability, quoting *Standard Oil Co. vs.*

*Nature of the Case*

*New Jersey*, 341 U.S. 428, 443: "The Full Faith and Credit Clause bars any double escheat".

The appellant filed exceptions to the Findings of Fact, Conclusions of Law and Decree of the trial court. In none of these exceptions did the appellant state the reason for the exception, or assert any constitutional objection.

The exceptions were argued before the lower court en banc and were dismissed, except for a formal correction as to the amount of the judgment. In its opinion (Jurisdictional Statement, App. A, 42-48), the Court said:

"We have herein discussed only the matters raised in the respondent's exceptions. At the oral argument on the exceptions, respondent argued many of the points that it presented at its first argument before the Court en banc. Since these points, although reargued, were not raised by exceptions, it is not necessary to take note of them at this stage of the proceedings. However, we have reconsidered all of the respondent's rearguments and are of the view that the Court has disposed of these matters in its opinion of December 15, 1958."

Appellant then appealed to the Supreme Court of Pennsylvania, which affirmed the court below, in an opinion filed June 29, 1960 (Jurisdictional Statement, App. A, 49-60).

In its Brief filed in the appeal to the Supreme Court of Pennsylvania, the appellant stated that there were three questions for the Court's determination, as follows:

"1. Where payors who are not Pennsylvania residents pay money to a New York corporation in Pennsylvania, and the corporation agrees to deliver

*Nature of the Case*

negotiable drafts in payment therefor to non-resident payees and makes payments or refunds by means of negotiable drafts or other instruments of indebtedness, does a petition for escheat limited solely to the moneys paid, designate any property within or subject to the control of Pennsylvania, where the moneys were sent out of Pennsylvania and mingled with the corporation's general funds?

"2. Where a petition for escheat seeks an escheat of moneys paid to a party which, in discharge of its obligations arising from the payments, has issued negotiable drafts or other instruments of indebtedness that are still outstanding, does a decree which is limited by the petition to a money judgment bar future claims?

"3. Where an escheator proceeds against a New York corporation, but does not designate in his petition for escheat a seizable res in Pennsylvania, does notice by publication that fails to notify all possible claimants bar other claimants?"

1. In its appeal brief filed in the Supreme Court of Pennsylvania, the appellant separated its first questions into two parts; one that the petition in escheat sought to recover the specific moneys which appellant had received in Pennsylvania for its money orders, and the other that the money order transactions created a debtor-creditor relationship which was terminated by the issuance of the drafts.

The Supreme Court of Pennsylvania rejected the appellant's premise that the petition in escheat was directed to the moneys which the appellant had received at the time of the money order transactions, and declared that

*Nature of the Case*

the subject-matter of the petition and of the escheat was the unclaimed obligation of the appellant arising from the money order transactions (Opinion, Jurisdictional Statement, App. A, 54).

The Supreme Court of Pennsylvania also held that the issuance of drafts did not operate as a discharge of the said obligations.

No federal question was involved in these determinations.

2. The second question submitted by the appellant was based on its assumption that the appellant had discharged its obligations on the money orders by the issuance of drafts.

As stated above, the Supreme Court rejected the appellant's assumption, and held that the money order obligations were not discharged by the drafts, since there was no agreement between the senders of the money orders and the appellant that the drafts were to constitute payment, and the drafts themselves were not paid.

This determination by the Supreme Court of Pennsylvania did not involve any federal question.

3. The third question presented by the appellant to the Supreme Court of Pennsylvania was based on the premise that there was no seizure of the res, and therefore notice by publication and posting did not constitute notice as to what property was to be escheated. Again, this premises was based upon the appellant's assertion that the Commonwealth sought to escheat the specific moneys received by the appellant from the senders of the money orders. However, as stated above, the Supreme

*Nature of the Case*

Court of Pennsylvania held that the res consisted of the unclaimed obligations owing by the appellant, and said:

"We inevitably come to the conclusion that the res of the escheat proceedings is, contrary to the appellant's contention, within the control of the Commonwealth. It is within the control of the Commonwealth because the holder Western Union is subject to the jurisdiction of the courts of the Commonwealth. Personal service of the petition on offices of the Western Union within the confines of the Commonwealth constituted a seizure of the res which is the subject of the escheat." (Opinion, Jurisdictional Statement, App. A, 74 )

This determination did not involve any federal question.

In its argument before the Supreme Court of Pennsylvania on this third question, the appellant went beyond the question itself, and argued that the notice directed by the court was a notice to senders only "and to no other parties whose rights are involved".

It argued that while the notice was directed "to all persons whatever claiming an interest in the personal property herein referred to", the notice was actually limited to the senders because the notice described the property sought to be escheated as "amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money order and refundable to the senders thereof".

While the appellant put the question as though a matter of law were involved, actually the question was as to

*Nature of the Case*

the meaning of the language of the notice. The court's interpretation of the language of the notice, while adverse to the appellant's contention, did not present a federal question.

## GROUND OF APPEAL SET UP BY APPELLANT

---

The appellant's grounds of appeal are set forth under the heading "Questions Presented" (Jurisdictional Statement, pages 3, 4, 5).

It sets forth three questions by number, beginning on page 3, but precedes these questions with an unnumbered opening paragraph containing a general statement which, if pertinent, would properly belong in its "Statement of the Case", and in this prefatory paragraph sets forth a suggestion of two questions, other than the numbered questions. One of these two prefatory questions hints at the possible retroactivity of the Pennsylvania escheat statute; the other declares that in the transactions involved in this case, there is a conflict of escheat laws between Pennsylvania and other states.

These two prefatory questions, thus insinuated in the opening paragraph, are herein referred to by the appellee merely to point out that they were not raised at any time in the court of first instance or in the appeal to the Supreme Court of Pennsylvania, and that no federal questions are thereby presented. We go, then, to the numbered questions.

1. Question No. 1, set forth by the appellant in the first numbered paragraph under its "Questions Involved", is whether the Commonwealth of Pennsylvania has the power to escheat property under and subject to its control, if the residence or domicile of the owners is unknown and may be in States other than Pennsylvania (Jurisdictional Statement, pages 3, 4).



*Grounds Set Up by Appellant*

2. The second question (Jurisdictional Statement, page 4) is whether the escheat to the Commonwealth of Pennsylvania will protect the appellant from later claims, either by the owners or by other States.

3. The third question (Jurisdictional Statement, pages 4, 5) is whether the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

## STATEMENT OF GROUNDS MAKING AGAINST JURISDICTION

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### **I. Failure of the Appellant To Present the Question to the Supreme Court of Pennsylvania (Third Question)**

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The third ground of appeal stated by the appellant is that the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the constitution of the United States.

While the appellant's Answer to Petition for Escheat asserted that the Pennsylvania escheat statute was contrary to the Constitution of the United States of America in making no provision for due and proper notice to claimants, the appellant did not thereafter insist on this defense. In the trial before the court of first instance, in the exceptions filed by the appellant to that Court's Findings of Fact, Conclusions of Law and Decree, and in the appeal to the Supreme Court of Pennsylvania, the appellant did not pursue this objection to the Pennsylvania statute. It can not now raise this objection in the present appeal.

It is to be noted also that in the Jurisdictional Statement, while under the heading "Questions Presented", the appellant raises the question of the constitutionality of the statute, as related to notice, the appellant's discussion under the title "Substantiality of Questions Involved" does not deal with the constitutionality of the statute, but only with the question whether the notice which was given met with the requirements of due process.

*Statement Against Jurisdiction*

The question thus presented by the appellant upon this appeal was neither timely nor properly raised.

The mere claim of such objection never afterward brought to the attention of the trial court or of the appellate court is not sufficient. "Error assigned but not noticed or relied upon in the brief or argument of counsel will be regarded as waived". *Hulbert vs. Chicago*, 202 U.S. 275.

In *Penna. Rd. Co. vs. Illinois Brick Co.*, 297 U.S. 447, 462, 463, the court said:

"As the highest court of the State declined to consider them because not raised in the circuit court or presented to it in accordance with practice that unquestionably was well established and reasonable, this court is within jurisdiction to consider either of them."

In *Cox vs. Texas*, 202 U.S. 446, the court said:

"It is proper to say that Art. I, Sec. 8, is referred to in the assignments of error before the Court of Appeals and before this Court. But it does not appear that the Court of Appeals dealt with the point, and probably it refused to do so on the ground that the section was not relied upon before the trial court."

In *Louisville vs. N. R. R. Co. vs. Woodford*, 234 U.S. 46, the court said:

"The decisions of this court not only have repeatedly held that a federal right, in order to be reviewable here, must be set up and denied in the state court, but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the state court declined to pass upon the question because it was not raised in the trial court as required by the state practice."

*Statement Against Jurisdiction*

Since this question was neither timely nor properly insisted upon before the trial court or the Supreme Court of Pennsylvania, and was not considered as dealt with there, the appellant has not established that the Supreme Court of the United States has jurisdiction.

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**II. The Questions Presented Have Been Foreclosed by  
Previous Decisions**

---

Where a federal question which is presented on appeal has been decided by it in previous cases, the Supreme Court of the United States will not exercise jurisdiction of the appeal.

*Leonard vs. Vicksburg S. & P. Rdr Co.*, 198 U.S. 416;

*King vs. West Virginia*, 216 U.S. 92;

*MacDonald vs. Oregon Navigation Co.*, 233 U.S. 665;

*City of Boston vs. Jackson*, 260 U.S. 309;

*Tidal Oil Co. vs. Flanagan*, 263 U.S. 444;

*Fleming vs. Fleming*, 264 U.S. 29.

1. The first question presented is whether Pennsylvania may constitutionally escheat obligations of a foreign corporation incurred in transactions in Pennsylvania, where the domicile of the owners of the obligation is unknown and may be outside Pennsylvania.

The question is foreclosed by previous decisions of the Supreme Court of the United States, which hold that

*Statement Against Jurisdiction*

the power of the State over such obligations is not based upon the residence or domicile of the parties to the transaction, but rests upon the fact that the transactions were carried on and the obligations came into being in the State, and under the protection of its laws.

In *Curry vs. McCanless*, 307 U.S. 357, 365-66, the court held that a State could levy a tax based on the activities of a foreign corporation in that State, saying:

“Such rights (not related to physical things) are but relationships between persons, natural or corporate, which the law recognizes by attaching to them certain sanctions enforceable in courts. The power of government over them and the protection which it gives them cannot be exerted through control of a physical thing. This can be made effective only through control over and protection afforded to those persons whose relationships are the origin of the rights.”

In *International Shoe Co. vs. Washington*, 326 U.S. 310, 320, the court stated:

“The activities carried on in behalf of the appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the State, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to

*Statement Against Jurisdiction*

our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there.”

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 439, the court said:

“Since choses in action have no spatial or tangible existence, control over them can ‘only arise from control or power over the person whose relationships are the source of the obligation’. *Estin vs. Estin*, 334 U.S. 541, 548. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the choses in action enables the court with such control to dispose of the rights of the parties to the intangible. . . . The rights of the owner of the stock and dividends comes within the reach of the court by the notice, i.e. service by publication; the rights of the appellant by personal service.”

These cases make it clear that the State’s power over obligations arising from transactions in the State does not rest upon the domicile of the parties, but on the contacts or ties which the State has with the transactions.

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 438, 439, the court said further:

“As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a State, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, *belonging to unknown owners* . . . Escheat is permitted against persons *whose addresses or existence is unknown*.” (Italics ours.)

*Statement Against Jurisdiction*

In *U. S. vs. Klein*, 106 F. 2d 213 (certiorari denied 308 U.S. 618), the court said:

“Obviously an escheat proceeding may not be defeated merely because the unknown owners cannot be located.”

See also *Security Savings Bank vs. California*, 263 U.S. 282, and *Anderson Natl. Bank vs. Lockett*, 321 U.S. 233, holding a State could escheat even against non-resident depositors.

See also *Pennington vs. Bank*, 243 U.S. 269, where the court said:

“The Fourteenth Amendment did not, in granting due process of law, abridge the jurisdiction which a State possessed over property within its border, regardless of the residence or non-residence of the owner.” (Italics ours.)

The foregoing cases make it clear that the State's power and control over obligations arising from transactions carried on in the State do not rest upon the domicile of the parties, but upon the contacts of the State with the transactions conducted in the State and under the protection of its laws.

While the appellant did not, in the State courts, raise any question as to retroactivity, it seeks to introduce this element into its first question by the assertion that “all the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted”.



*Statement Against Jurisdiction*

Again the appellant seeks to imply that the Commonwealth's petition was directed at the very moneys received by the appellant at the time of the money order transactions. This implication has been fully dealt with above, and has been shown to have no place in this appeal.

If the question of retroactivity were to present a federal question, the appellant could not present it on this appeal, not having raised the question below.

However, even if there were a federal question, properly raised, the question itself is foreclosed by the *Standard Oil* case. There the court said:

"There is no impairment of contract by New Jersey's statute, enacted subsequent to the creation of the obligations ~~here under examination~~, but only the exercise of a regulatory power over abandoned property."

*Standard Oil Co. vs. New Jersey*, 341 U.S. 428.

The appellant itself recognizes in its question that the earlier decisions have affirmed the power and control of a State over obligations created by transactions in that State. The appellant therefore seeks to disregard the determination of the Pennsylvania courts in this case as to matters which do not involve federal questions, in order to arrive at a federal question. This it cannot do. The appellant cannot by this means escape the decisions which foreclose this appeal.

2. The second question presented by the appellant is whether the escheat to the Commonwealth of Pennsylvania will protect the appellant from later claims, either by the owners or by other States.

*Statement Against Jurisdiction*

This question is foreclosed by *Standard Oil Co. vs. N. J.*, 341 U.S. 428, in which the court said:

“Full Faith and Credit.—Finally, we shall deal with appellant’s objection that this statutory escheat takes its property without due process because it does not protect it from claims by the owners. The argument is that the protection afforded by the New Jersey escheat statute is inadequate in that (it) is no protection beyond the state against owners of the escheated shares or against escheat or conservation actions by other states against Standard Oil of New Jersey for the same debts or demands . . .

“We have indicated above that we consider the notice to the stockholders adequate to support a valid judgment against their rights as well as those of the Company. The res is the debt and the same rule applies as with tangible property. The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat.”

3. As its third numbered question (Jurisdictional Statement, 4, 5), the appellant asks whether the Pennsylvania statute is repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania, naming no claimants of the money

*Statement Against Jurisdiction*

residing there or elsewhere, even where the last known addresses of possible claimants are available.

In framing this question, the appellant has combined matters which do not involve federal questions with matters which appellant indicates do involve federal questions.

As part of its question, the appellant states that the petition filed under the escheat statute does not identify a res in Pennsylvania, and does not result in the seizure of any property in Philadelphia.

The appellant seeks first to raise the question of situs, a concept which the case of *Standard Oil Co. v.s. New Jersey*, 341 U.S. 428, discussed and termed a fiction, and explained that the basis of a court's power is control. The court there said:

"We see no reason to doubt that where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt. Since choses in action have no spatial or tangible existence, control over them can only arise from control or power over the persons whose relationships are the source of the rights and obligations. Situs of an intangible is fictional, but control over parties whose judicially coerced action can make effective rights created by the chose in action enables the court with such control to dispose of the rights of the parties to such intangibles. . . . The rights of the owner of the stock and dividends (intangible) comes within the reach of the court by the notice, i.e., service by publication; the rights of the appellant by personal service. That power enables the escheating state to compel the issue of the certificates or payment of the dividends."

*Statement Against Jurisdiction*

The next element the appellant introduces into this question is that of identification of the res. This is a repetition of a non-federal question included as part of appellant's second question in this appeal, and as pointed out above, the Supreme Court of Pennsylvania affirmed the court below in identifying the res as the debts and obligations of the appellant arising out of its money order transactions. This was precisely what the Supreme Court of the United States said in *Standard Oil Co. vs. New Jersey*, 341 U.S. 428: The res is "the debts or demands due to the escheated estate", and "It is its (appellant's) obligation to pay to the escheated estate that is taken".

Next the appellant asserts that there is no seizure of any property in Pennsylvania. However, the appellant does not deny that there was personal service of the petition upon it in Pennsylvania, and, as the court said in *Security Savings Bank vs. California*, 263 U.S. 282: "Personal service on the bank effected seizure of the deposit".

In *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, the court reiterated its statement in the *Security Savings Bank* case, and said:

"No matter where the appellant's assets may be, since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation."

These three parts of the appellant's third question are not federal questions, but if they be, they are foreclosed by the above decided cases.

Since these three questions, that of control, identification of the res, and seizure of the res, are component parts of the appellant's third numbered question, the question would fall in its entirety, unless we treat the three sub-

*Statement Against Jurisdiction*

ordinate questions as independent questions, and look at the last subordinate part of the third question as an independent question.

This last portion of the third question is whether the notice by publication complied with due process.

The appellant asserts that no notice has been given except by publication only in Pennsylvania, naming no claimants of the money, residing there or elsewhere, even where the last known addresses of possible claimants are available. It declares that the notice is further lacking because there was no attempt to notify these senders and payees by mail.

In contending that such notice by mail should have been given, the appellant would require the Commonwealth to do what the appellant itself has made clear would be a fruitless act. In paragraph 13 of its Answer (R. 10a), the appellant said:

"In each instance in which the defendant (appellant) at its offices and places of business in Pennsylvania received moneys from a person desiring to send a money order and did not effect payment or repayment as set forth in paragraph 11 hereof for more than seven years after the sender was first entitled to such repayment, the whereabouts of the sender have been unknown to the defendant for more than seven years . . . ."

And in paragraph 14 (R. 11a) of its Answer, the appellant stated that in each instance in which it was unable to repay a sender by issuing to him a negotiable draft, and in each instance in which a negotiable draft was issued to the sender and it was unable to pay the draft, it was

*Statement Against Jurisdiction*

unable to do so "because the whereabouts of the sender were unknown to it".

If notice by mail would have been anything but a futile gesture, the appellant could have notified such persons by mail, and, if effective, such claims would not be in this case. However, there is no suggestion that the appellant did notify these persons by mail, and the reason it did not do so was because it would have been useless. The last known address had no meaning, because, as the Supreme Court of Pennsylvania said, the senders had "vanished into the mysterious sea of Whereabouts Unknown."

In determining the adequacy of notice by publication, the question is not whether the Commonwealth undertook every conceivable form of notice, but whether the form of notice complied with due process.

In *Anderson vs. Luckett*, 321 U.S. 233, in an escheat action, the court said:

"What is due process in a procedure affecting property interest must be determined by taking into account the purpose of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case."

In *Dent vs. West Virginia*, 129 U.S. 114, 124, the court said:

"Legislation must necessarily vary with the different objects upon which it is designed to operate. It is sufficient, for the purpose of this case, to say that legislation is not open to the charge of depriving one of his rights without due process of law, if it be

*Statement Against Jurisdiction*

general in its operation upon the subjects to which it relates, and is enforceable in the usual modes established in the administration of government with respect to kindred matters, that is, by process or proceedings adopted to the nature of the case."

In *Standard Oil Co. vs. New Jersey*, supra, the court cited *Security Savings Bank vs. California*, 263 U.S. 282, and said:

"It was held, p. 287, that (the personal service on the bank effected seizure of the deposit and) the publication of the summons was effective as similar publication would be in litigation involving unknown persons with possible claims to property".

The *Standard Oil Co.* case then cited and followed *Mullane vs. Central Hanover Trust Co.*, 339 U.S. 306, 317, in which it was said:

"This Court has not hesitated to approve of resort to publication as a customary substitute in another class of cases where it is not reasonably possible or practicable to give more adequate warning. . . .

"Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged in behalf of any beneficiaries whose interests or addresses are unknown to the trustee".

The court said also in the *Mullane* case:

"It has been recognized that in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits, and creates no constitutional bar to a final decree foreclosing their rights. . . .



*Statement Against Jurisdiction*

"However great the odds that publication will never reach the eyes of such unknown parties, it is not in the typical case much more likely to fail than any of the choices open to legislatures endeavoring to prescribe the best notice practicable."

Certainly publication and posting was not more likely to fail than the method suggested by the appellant, to give notice by mail to persons whose whereabouts the appellant itself declares are unknown.

The court said in the *Standard Oil* case:

"The sound reasons stated in the foregoing cases for deeming the notices there given adequate to bind interested persons in the respective proceedings, lead us to the conclusion that the notice by publication in this case was adequate."

The appellant complains that publication was made only in Pennsylvania. A similar objection was made in *Security Savings Bank vs. California*, 263 U.S. 282, where the only publication required by the statute was in Sacramento, the State Capitol, although the respondent bank did not have a place of business there. The bank objected to publication in the State Capitol only.

In the present case, the publication was not only in the State Capitol, but was made in the two largest cities of the State as well.

The appellant, in attacking the adequacy of the published notice, overlooks the fact that there was another form of notice, sometimes considered to be sufficient without more, the notice given by the seizure of the res. As said by the lower court in *Hollingsworth vs. Barbour*, 29 U.S. 466, 475, and affirmed by the Supreme Court:

*Statement Against Jurisdiction*

“The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice.”

The principle was reaffirmed in *Anderson National Bank vs. Luckett*, supra, at page 245. The court there said:

“In all such proceedings the seizure itself is itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank vs. Coles*, 280 U.S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure.”

What is seizure of a debt or other obligation is explained in *Security Savings Bank vs. California*, supra, which stated:

“Seizure of the res is effected by the personal service upon the bank.”

Cited with approval in *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 439, which said:

“Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation.”

The appellant's third question is foreclosed by the decisions above cited.

It is submitted that the questions presented in this appeal have already been definitely determined by the Supreme Court of the United States, that no substantial question is presented by this appeal entitling appellant to involve the jurisdiction of the Supreme Court of the United States, and that the appeal should be dismissed.

*Motion To Dismiss or Affirm***MOTION TO DISMISS OR AFFIRM**

---

Wherefore, the appellee respectfully moves that the within appeal be dismissed or that the judgment of the Supreme Court of Pennsylvania be affirmed.

**A. JERE CRESKOFF,**  
**ROBERT A. ENDERS,**  
**MICHAEL EDELMAN,**  
*Attorneys for Appellee.*

**APPENDIX**

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PENNSYLVANIA ACT OF MAY 2, 1889, P.L. 66, AS  
AMENDED BY ACT OF JULY 29, 1953, P.L. 986

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**ESCHEATS**

• • • • •

Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions

*Appendix--Pennsylvania Escheat Statute*

and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

. . . . .

The jurisdiction in all cases of escheat under the provisions of this act, shall be vested in the courts of this Commonwealth, as follows, namely:

. . . . .

Jurisdiction shall be vested in the court of common pleas of the county in which service of the petition of escheat may be made upon the corporation or other person by whom the property is held or owing, in the manner provided under the provisions of the Pennsylvania Rules of Civil Procedure for the service of a writ of summons or complaint in an action of assumpsit.

The Court of Common Pleas of Dauphin County shall have concurrent jurisdiction in all cases of escheat under the provisions of this act in which jurisdiction is vested in the courts of common pleas.

. . . . .

Whensoever any escheator shall be duly commissioned by the Department of Revenue, of and concerning any property, real or personal, escheated or supposed to have escheated to the Commonwealth under the provisions of this act, he shall apply by petition to the court having jurisdiction in the premises to hear and determine whether an escheat has occurred or not, and shall in his petition set forth the facts of his appointment and the nature and character of the alleged escheat, and shall also state, as far as he conveniently can, the location, character, and amount of the property, real and personal, alleged to have

*Appendix—Pennsylvania Escheat Statute*

escheated, together with the name and address of the person or persons having the same in his or their possession.

. . . . .

A copy of the petition shall be served upon the corporation or other person by whom the property is held or owing as respondent, within the time and in the manner provided under the provisions of the Pennsylvania Rules of Civil Procedure for the service of a writ of summons or complaint in an action of assumpsit. The respondent shall, within twenty days after service of the said petition, file an answer thereto, setting forth the name and address, if known, of every person having an interest in the property, together with any other facts relative thereto of which the respondent shall have knowledge, and whether any claim to the property has been made upon or against the respondent. Any averment in the petition not specifically denied in the answer shall be taken as admitted.

Any person having or claiming an interest in any real or personal property as to which a petition of escheat has been filed may, on or before the time fixed for hearing or at such subsequent time as may be allowed by order of the court, file with the court a written notice of claim, in the form of an answer to the petition, and shall serve a copy of such answer upon the escheator, and shall, at the time fixed for hearing, appear in person or by duly authorized counsel and substantiate his claim or otherwise show cause why such property or any part thereof should not be adjudged to have escheated to the Commonwealth. Any averment in the petition not specifically denied in the answer shall be taken as admitted.

. . . . .

*Appendix—Pennsylvania Escheat Statute*

Whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction \* \* \* shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the escheator and all parties claiming to have any interest in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.

The escheator may, either before or after filing a petition in escheat, file a petition in the Court of Common Pleas of Dauphin County or in the court of common pleas of a county in which the respondent may be served in the manner provided for the service of a summons or complaint in an action of assumpsit, praying for depositions, discovery and inspection, and the procedure upon such petition shall be in accordance with the Pennsylvania Rules of Civil Procedure relating to depositions, discovery and inspection.

. . . . .

The term "real or personal property", as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, ne-



*Appendix—Pennsylvania Escheat Statute*

gotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

The term "beneficial owner", as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property.

• • • • •

Whenever any adjudication or finding in escheat shall have been filed by any court, exceptions may be filed there-to by the escheator or any other party or parties interested in said proceedings . . . and if said exceptions are, after hearing, sustained in whole or in part, the court shall forth-with proceed to file an amended adjudication or finding, in accordance with its determination upon such exceptions.

The Commonwealth, or any person aggrieved or claiming to be aggrieved by a final adjudication in escheat, may appeal from the same to the Supreme Court.

**LIBRARY**

**SUPREME COURT, U. S.**

JAMES K. R.

IN THE

**Supreme Court of the United States**

**NO. 543** 15

**OCTOBER TERM, 1960**

**THE WESTERN UNION TELEGRAPH COMPANY,**  
Appellant,

v.

**COMMONWEALTH OF PENNSYLVANIA, by**  
**SIDNEY GOTTLIEB, Escheator, Appellee.**

**Appeal From the Supreme Court of Pennsylvania**

**BRIEF IN REPLY TO APPELLEE'S STATEMENT IN**  
**OPPOSITION AND MOTION TO DISMISS OR AFFIRM**

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## INDEX

	PAGE
The Questions Presented Are Federal Questions Determined by the Supreme Court of Pennsylvania .....	1
Previous Decisions Have Not Foreclosed the Questions Presented .....	5

### TABLE OF CITATIONS

Alton R. Co. v. Ill. Com., 305 U.S. 548 .....	9
Anderson National Bank v. Lockett, 321 U.S. 233 ..	6, 8
Cheseboro v. Los Angeles County Flood Control Dist., 306 U.S. 459 .....	9
Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541 .....	5
Cudahy Packing Co. v. Parramore, 263 U.S. 418 ..	4
Curry v. McCandless, 207 U.S. 357 .....	5
Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 .....	4
Fiske v. Kansas, 274 U.S. 380 .....	5
Hamilton v. Regents of the University of California, 293 U.S. 245 .....	9
International Shoe Co. v. Washington, 326 U.S. 310	5
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 .....	8
Security Savings Bank v. California, 263 U.S. 282 ..	6, 8
Standard Oil Co. v. New Jersey, 341 U.S. 428 .....	6, 7
Texas v. Florida, 306 U.S. 398 .....	5
United States v. Klein, 303 U.S. 276 .....	6
Ward & Gow v. Krinsky, 259 U.S. 503 .....	4

### CONSTITUTION AND STATUTES

Pennsylvania Escheat Act of May 2, 1889, P.L. 66, as amended (27 Purdon's Statutes, §§ 1, 41-111, 333) .....	2
U. S. Constitution—Fourteenth Amendment, Section 1 .....	2, 3, 5

IN THE  
**Supreme Court of the United States**

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**NO. 543**

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**OCTOBER TERM, 1960**

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**THE WESTERN UNION TELEGRAPH COMPANY,**  
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**COMMONWEALTH OF PENNSYLVANIA, by**  
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---

**Appeal From the Supreme Court of Pennsylvania**

---

**BRIEF IN REPLY TO APPELLEE'S STATEMENT IN**  
**OPPOSITION AND MOTION TO DISMISS OR AFFIRM**

---

**I.**

**The Questions Presented on This Appeal Are Federal Questions Determined by the Supreme Court of Pennsylvania.**

The appellee incorrectly argues that the determination by the Supreme Court of Pennsylvania of the three questions which the appellant presented to that court did not involve federal questions. The three questions are set forth at pages 9 and 10 of the Appellee's Statement in Opposition to Appellant's Jurisdictional Statement, and were summarized by the Supreme Court of Pennsylvania as follows (R. 154; App. A, 51): "(1) The

*Brief in Reply to Appellee's Statement.*

Commonwealth's petition does not designate any property of Western Union which is within or subject to the control of the Commonwealth; (2) A decree in Escheat will not protect Western Union from future claims; (3) The notice given by the Commonwealth does not meet the requirements of due process." These questions were raised initially before the trial court in the appellant's answer to the petition (for record references, see Appellant's Jurisdictional Statement, p. 6).

(1) The first question presented to the Supreme Court of Pennsylvania attacked the trial court's holding that the property designated in the petition for escheat was, in the language of the Pennsylvania Escheat Act, "within or subject to the control of the Commonwealth." Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333). The appellant contended that since the petition was directed solely to specific moneys which had been sent out of Pennsylvania and mingled with the appellant's general funds, there was no escheatable property within or subject to the control of Pennsylvania; that the lower court, in holding to the contrary, interpreted the quoted language of the Pennsylvania Escheat Act to cover property outside the jurisdiction of Pennsylvania; and that the statute, as so applied, taking this property from the appellant, did so in violation of the jurisdictional requirements of due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States. See also appellant's answer (R. 13-14). The appellant likewise contended that where it had issued negotiable drafts in payment of money order transactions, its obligation was suspended until the drafts were presented. The Supreme Court of Pennsylvania held that the Commonwealth of Pennsylvania

*Brief in Reply to Appellee's Statement.*

had sufficient contact with the transactions to warrant a finding that funds representing the amounts of money orders involved were subject to the control of the Commonwealth under the Pennsylvania Escheat Act. We maintain that this violated due process. The first question was in its every aspect a federal question.

(2) The second question presented to the Supreme Court of Pennsylvania raised the issue of whether the petition for escheat under the Pennsylvania Escheat Act, the petition being limited solely to money, enabled the Court to enter a judgment in escheat which would protect the appellant from future claims. The appellant argued that since the Act defined escheatable property to mean "choses in action, claims, debts, demands," no judgment could be entered under the Act which would protect the appellant from possible future claims by senders, payees and other states and foreign countries, and that at most it precluded only another escheat proceeding by the Commonwealth of Pennsylvania for money. This second question, therefore, presented directly to the Supreme Court of Pennsylvania the question whether the Pennsylvania Escheat Act, in causing the escheat of amounts under a petition directed solely to money, deprived the appellant of property without due process of law contrary to Section 1 of the Fourteenth Amendment, in that it left the appellant open to "claims, debts and demands" of other states or third persons.

(3) We submit that the summary by the Supreme Court of Pennsylvania of the third question which was presented to that court and which we have quoted above, sufficiently answers the appellee's contention that no federal question was involved in the court's determina-

*Brief in Reply to Appellee's Statement.*

tion of that question. We shall, however, discuss this point in Part II of this brief.

With regard to the appellant's third question, the appellee correctly states that the appellant did not raise in the Supreme Court of Pennsylvania a contention that the Pennsylvania Escheat Act makes no provision for due and proper notice. But the appellee incorrectly assumes that the appellant is now presenting this question. On the contrary, the issue which we raise in our third question is whether the notice, as published pursuant to the Pennsylvania Escheat Act, met the requirements of due process. The appellant presented this question to both the Common Pleas Court and the Supreme Court of Pennsylvania, and both courts ruled against the appellant (R. 16; App. A, 38, 51, 59).

The notice section of the Pennsylvania Escheat Act provides (App. B, 63) that the trial court "shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof." The trial court in our case ordered that notice be given, and a notice purportedly in accord with the Act was published. The appellant contends that the notice did not meet the requirements of due process. As stated in *Dahnke-Walker Milling Company v. Bondurant*, 257 U.S. 282, 290, "As the state court applied and enforced to the plaintiff's disadvantage a state statute the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error." *Ward & Gow v. Krinsky*, 259 U.S. 503, 510; *Cudahy Packing Co. v. Parramore*, 263 U.S. 418,



*Brief in Reply to Appellee's Statement.*

422; cf. *Fiske v. Kansas*, 274 U.S. 380, 385. Since the appellant seasonably insisted that the notice provision of the Pennsylvania Escheat Act as applied was repugnant to Section 1 of the Fourteenth Amendment, this Court has jurisdiction of this appeal.

II.

**Previous Decisions Have Not Foreclosed the Questions Presented.**

(1) With regard to the appellee's contention that the appellant's first question presented to this Court has been foreclosed by previous decisions, we submit that our discussion of this question in our Jurisdictional Statement (pp. 11-15) very clearly shows that the question is almost identical with that reserved by this Court in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541. No case decided by this Court has determined the constitutionality of a statute of a state which causes the escheat of amounts representing sums involved in transactions between a corporation not domiciled in the state and unknown persons who are not shown ever to have been residents of that state. That is the question here.

The considerations involved in tax cases, such as *Curry v. McCandless*, 307 U.S. 357, and *International Shoe Co. v. Washington*, 326 U.S. 310, cited by the appellee, are of no point in an escheat case. Many states may tax property; only one can cause its escheat. See dissenting opinion of Mr. Justice Frankfurter in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 522; and compare *Texas v. Florida*, 306 U.S. 398.

*Brief in Reply to Appellee's Statement.*

Nor is *Standard Oil Co. v. New Jersey*, 341 U.S. 428, in point, since there the State of New Jersey had proceeded against a New Jersey corporation, not a foreign corporation. Similarly, in *Security Savings Bank v. California*, 263 U.S. 283, cited by the appellee, the State of California sought the escheat of abandoned bank deposits in a bank which was a California corporation and had its only place of business in that state. The *Security Savings Bank* case and the other cases involving bank deposits on which the appellee relies are not determinative of our case, for the reason that there the escheating states were able to seize and did seize abandoned bank deposits of the banks in the states, those deposits being "a part of the mass of property within the state whose transfer and devolution is subject to state control": *Anderson National Bank v. Lockett*, 321 U.S. 233, 241. In *United States v. Klein*, 303 U.S. 276, the Commonwealth of Pennsylvania was able to escheat the funds because they were within the control of a United States District Court in Pennsylvania. No claimant could secure the funds without first coming into Pennsylvania and establishing his claim before that court.

While we are not contending that the Pennsylvania Escheat Act is unconstitutional because it is retroactive, we do think that the fact that the statute was enacted more than seven years after the money in the money order transactions had been sent to New York is relevant to a determination of the constitutionality of the Act on the claim of lack of jurisdiction. The Supreme Court of Pennsylvania has declared that the Act is constitutional even though a petition for escheat under the Act is directed to specific money which is no longer in Pennsylvania. The fact that the money had been sent out of the

*Brief in Reply to Appellee's Statement.*

state long before the passage of the Act shows that the Pennsylvania Supreme Court has given to the Act a latitude of interpretation far beyond the limits of due process.

(2) We have already answered appellee's argument that our second question is foreclosed by *Standard Oil Co. v. New Jersey*, 341 U.S. 428. There the court decided that the State of New Jersey could constitutionally cause the escheat of property of a domestic corporation; here the appellant is not a domestic but a foreign corporation. As the Court stated in the *Standard Oil* case, 341 U.S. 428, 442, in the paragraph of its opinion immediately preceding the paragraph quoted in the appellee's brief:

"We think that stock certificates and undelivered dividends thereon may also be abandoned property subject to the disposition of the *domiciliary state of the corporation* when the whereabouts of the owners are unknown for such lengths of time, and under such circumstances, as permit the declaration of abandonment. That rule is applicable here." (Italics ours.)

(3) In an attempt to show that our third question is foreclosed by prior decisions, the appellee seeks to split the question into separate elements, to pick and choose as to each so-called element language favorable to its argument from among decisions involving jurisdictional facts entirely different from those in our case, and then to say that because each of the elements (in a different context) has been otherwise decided the question of defective notice in this case has been foreclosed. In addition, the appellee avers that the appellant has

*Brief in Reply to Appellee's Statement.*

included in this question matters which do not involve federal questions. But a question of whether due notice was given in any particular case cannot be presented *in vacuo*: "What is due process in a procedure affecting property interests, must be determined by taking into account the purpose of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case." *Anderson National Bank v. Lockett*, 321 U.S. 233, 246. Accordingly, the question of whether there was adequate notice involves the determination of the question whether there was a seizable res identified in the petition, since, as the Court stated in *Security Savings Bank v. California*, 263 U.S. 282, 287: "[T]he essentials of jurisdiction over the deposits are that there be seizure of the res at the commencement of the suit; and reasonable notice and opportunity to be heard." There was no seizable res designated in the petition for escheat and consequently there was no seizure. Also involved in the question of the adequacy of the notice is whether the notice was directed to all possible claimants, and as we have pointed out in our Jurisdictional Statement (p. 19), the notice was directed only to senders and did not apprise payees and holders of outstanding negotiable drafts of the pendency of the escheat action. Then, finally, we have shown that names and last known addresses of possible claimants were of record but were not included in the notice, so that under *Mullane v. Hanover Bank & Trust Co.*, 339 U.S. 306, the notice did not meet the requirements of due process. It is no answer for the appellee to say that if the names and last known addresses were available, the appellant should have made an effort to notify them by mail. There is nothing in the

### *Conclusion.*

record to show whether the appellant did or did not mail a notice to all possible claimants, and it is submitted that the appellee cannot rely upon the action or inaction of the appellant in order to validate a defective notice in a judicial proceeding.

### CONCLUSION

We trust that we have shown that substantial and novel jurisdictional questions are here involved. We need not have shown so much; for an appeal will not be dismissed for want of a substantial federal question unless the questions of the appellant are "so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance." *Hamilton v. Regents of the University of California*, 293 U.S. 245, 258. See also *Alton R. Co. v. Ill. Com.*, 305 U.S. 548, 550; *Cheseboro v. Los Angeles County Flood Control Dist.*, 306 U.S. 459, 463. We submit, therefore, that the Supreme Court of the United States has jurisdiction of the appeal, that substantial questions are presented, and that appellee's motion to dismiss or affirm should be denied.

Respectfully submitted,

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FILED

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JAMES R. BROWNING, Clerk

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1961

NO. 15

THE WESTERN UNION TELEGRAPH COMPANY,  
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, by SIDNEY  
GOTTLIEB, Escheator, Appellee

Appeal From the Supreme Court of Pennsylvania

**BRIEF FOR APPELLANT**

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## INDEX

	PAGE
Opinions Below .....	1
Jurisdiction .....	1
Constitutional Provision and Statute Involved .....	2
Questions Presented .....	2
Statement .....	4
Summary of Argument .....	8
<b>Argument</b>	
I. Pennsylvania's Contact with the Money Order Transactions Is Not Such as to Justify Escheat .....	11
II. The Notice Purportedly Given Did Not Satisfy the Requirements of Due Process .....	18
III. The Pennsylvania Decree Does Not Protect the Appellant Against Future Claims .....	26
Conclusion .....	33
Appendix A—Pertinent Pennsylvania Statutes .....	34
Appendix B—Abandoned Property Laws of States Other Than Pennsylvania .....	37

## TABLE OF CITATIONS

### CASES

Anderson National Bank v. Luckett, 321 U.S. 233 ..	11, 17, 19, 20
Canada Southern R. Co. v. Gebhard, 109 U.S. 527 ...	29
Connecticut Mutual Life Insurance Co. v. Moore, 333 U.S. 541 .....	17, 27, 32
Gehringer v. Real Estate-Land Title and Trust Co., 321 Pa. 401, 184 Atl. 100 (1936) .....	15
Hamilton v. Brown, 161 U.S. 256 .....	20
Hanson v. Denckla, 357 U.S. 235 .....	19



*Table of Citations.*

CASES	PAGE
Hollingsworth v. Barbour, 4 Pet. 466 .....	19
Holmes v. Briggs, 131 Pa. 233, 18 Atl. 928 (1890) ...	15
Jarecki v. G. D. Searle & Co., 367 U.S. 303 .....	29
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 .....	9, 25
Pennoyer v. Neff, 95 U.S. 714 .....	19
S. A. Gerrard Co. v. Tradesmen's National Bank & Trust Co., 318 Pa. 100, 177 Atl. 760 (1935) ....	15
Scott v. McNeal, 154 U.S. 34 .....	20
Security Savings Bank v. California, 263 U.S. 282 .. .....	11, 17, 20
Standard Oil Co. v. New Jersey, 341 U.S. 428 .....	17, 29, 32
State of New Jersey v. Sperry & Hutchinson Co., 23 N.J. 38, 127 A. 2d 169 (1956) .....	28
State of New Jersey v. Western Union Telegraph Co., 17 N.J. 149, 110 A. 2d 115 (1954) .....	25, 28
Texas v. Florida, 306 U.S. 398 .....	9, 27, 31
United States v. Klein, 303 U.S. 276 .....	17
Walker v. Hutchinson, 352 U.S. 112 .....	25
Wendkos v. Scranton Life Ins. Co., 340 Pa. 550, 17 A. 2d 895 (1941) .....	15
Western Union Telegraph Co. v. Esteve Bros. & Co., 256 U.S. 566 .....	14
Western Union Telegraph Co. v. Priester, 276 U.S. 252 .....	14

# Table of Citations.

## CONSTITUTION AND STATUTES

	PAGE
Massachusetts General Laws, Chap. 200A .....	27
McKinney's Consolidated Laws of New York, Abandoned Property Law, § § 1309 <i>et seq.</i> .....	12, 27
New Jersey Revised Statutes, Title 2A, § § 37-29 <i>et seq.</i> .....	28
Pennsylvania Escheat Acts:	
Act of May 2, 1889, P. L. 66, as amended by the Act of July 29, 1953, P. L. 986 (27 Purdon's Statutes § § 43, 111, 333) .....	2, 3, 4, 21, 29
Act of July 7, 1915, P. L. 878, § 6, as amended (27 Purdon's Statutes § 281) .....	23
Act of June 25, 1937, P. L. 2063, § 5, (27 Purdon's Statutes § 438) .....	23
Act of May 11, 1949, P. L. 1140, § 5, (27 Purdon's Statutes § 465) .....	23
Pennsylvania Uniform Commercial Code, Act of April 6, 1953, P. L. 3, § 3-802, as amended (12A Purdon's Statutes § 3-802) .....	15
United States Constitution:	
Article IV, § 1 .....	26
Fourteenth Amendment, § 1 .....	2, 3, 4, 8, 9, 11, 19, 25, 26, 33

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**OCTOBER TERM, 1961**

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**NO. 15**

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**THE WESTERN UNION TELEGRAPH COMPANY,**  
Appellant

v.

**COMMONWEALTH OF PENNSYLVANIA, by SIDNEY  
GOTTLIEB, Escheator, Appellee**

---

Appeal From the Supreme Court of Pennsylvania

---

**BRIEF FOR APPELLANT**

---

**OPINIONS BELOW**

The opinion of the Supreme Court of Pennsylvania is reported at 400 Pa. 337, 162 A. 2d 617. The opinions of the Court of Common Pleas of Dauphin County are reported at 73 Dauphin County Reports 160 and 74 Dauphin County Reports 49.

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**JURISDICTION**

The final decree of the Supreme Court of Pennsylvania was entered on June 29, 1960 (R. 88). Notice of appeal was filed in that court on September 27, 1960 (R. 97). Probable jurisdiction was noted by this Court on January 23, 1961 (R. 102). Jurisdiction of this appeal rests on 28 U.S.C. § 1257 (2), since there is drawn in ques-

*Questions Presented.*

tion the validity of a Pennsylvania statute under the due process clause of the Fourteenth Amendment to the Constitution of the United States and the decision below was in favor of its validity.

---

**CONSTITUTIONAL PROVISION AND STATUTE INVOLVED**

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

The pertinent provisions of the Pennsylvania Escheat Act of May 2, 1889, P. L. 66, as amended by the Act of July 29, 1953, P. L. 986 (27 Purdon's Statutes §§ 43, 111, 333) are set forth in Appendix A hereto.

---

**QUESTIONS PRESENTED**

This case involves the right of Pennsylvania under provisions of its escheat statute to take money which a New York corporation received in connection with telegraphic money order transactions and sent to New York more than seven years before such provisions of the Pennsylvania statute were enacted. In connection with most of the transactions involved, negotiable drafts had been issued in states other than Pennsylvania, payable at banks outside Pennsylvania. The notice was by publication only, naming no claimants, and referring only to money, not to negotiable drafts.

In detail, the questions presented are as follows:

1. Is the Pennsylvania Act of May 2, 1889, P. L. 66, as amended (27 Purdon's Statutes §§ 43, 111, 333) re-

*Questions Presented.*

pugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States, as a deprivation of property without due process of law, in causing the escheat to the Commonwealth of Pennsylvania of:

a. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, drawn and delivered by a New York corporation outside Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

b. the amounts of outstanding negotiable drafts, payable outside Pennsylvania, delivered by a New York corporation within Pennsylvania to persons not shown to be residents of Pennsylvania, and presently held by persons not shown to be such residents;

c. unclaimed amounts owed to persons, not shown to be residents of Pennsylvania, who paid corresponding amounts in Pennsylvania to a New York corporation in telegraphic money order transactions which could not be consummated;

all of the moneys which had been paid to the New York corporation in the transactions involved having been transferred to New York before any escheat proceeding was instituted or any Pennsylvania statute providing for escheat of such moneys had been enacted?

2. Is the Pennsylvania statute thus repugnant to the Fourteenth Amendment in causing the escheat of money of a New York corporation under a petition which does not identify a res in Pennsylvania and does not result in seizure of any property in Pennsylvania, no notice being given except by publication only in Pennsylvania,

*Statement.*

naming no claimants of the money residing there or elsewhere, even where the last known addresses of possible claimants are available?

3. Is the Pennsylvania statute thus repugnant to the Fourteenth Amendment in causing the escheat of amounts under a petition directed solely to money of a corporation, which escheat does not bar the collection from such corporation, by other states or third persons, of claims to these amounts based upon negotiable drafts and other choses in action?

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**STATEMENT**

This case arose on a petition for escheat filed in the Court of Common Pleas of Dauphin County, Pennsylvania. From a judgment of escheat entered in that court (R. 56-57) appeal was taken to the Supreme Court of Pennsylvania. The present appeal follows from the affirmance by the Supreme Court of Pennsylvania of the decree of the lower court.

Prior to July 29, 1953, there was no Pennsylvania statute under which the Commonwealth of Pennsylvania could have claimed the right to escheat the amounts involved in these proceedings. On that date, the Pennsylvania Escheat Act of May 2, 1889, P. L. 66, which applied only to the escheat of property held by fiduciaries and to estates of intestates without known heirs or kindred, was amended to bring within its scope other persons and "every . . . form of personal property, tangible or intangible, and all interests therein, whether legal or equitable." Act of July 29, 1953, P. L. 986, §§ 1, 5 (27 Purdon's Statutes §§ 333, 111). The Commonwealth of Pennsylvania

*Statement.*

on December 21, 1953 (within five months after the amendment of the statute), began this proceeding against appellant.

The Common Pleas Court directed (R. 11-13) the posting and publication of a notice which was posted in the office of its prothonotary and published once in newspapers of general circulation in Dauphin County, Philadelphia and Pittsburgh, Pennsylvania. The notice was addressed to "all persons whatsoever claiming an interest in the personal property herein referred to" (R. 12), referred to the petition for escheat on file, and added (R. 12) :

"The names and last known addresses of the owners or beneficial owners of, or persons entitled to, the said property, the nature and amount of such property are set forth in the records on file in the office of the Prothonotary.

"The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders . . ."

The petition (R. 1-3) sought the escheat of moneys received by the appellant in Pennsylvania in conducting its money order service and remaining unclaimed for more than seven years. The appellant, a corporation organized and existing under the laws of New York, with its principal place of business at 60 Hudson Street, New York City, is authorized to do business in Pennsylvania and the other states of the continental United States, the



*Statement.*

District of Columbia and foreign countries and as a part of its business, carries on in these jurisdictions a telegraphic money order service (R. 13). It was subject to regulations of the Interstate Commerce Commission from 1916 to 1934 and has from 1934 to the present been regulated by the Federal Communications Commission and similar public service regulatory bodies in the District of Columbia and in the several states (R. 14). Its books of rules governing money order service have been filed since 1938 as its tariffs with the federal and state regulatory bodies (R. 14-15).

The procedure observed in the handling of the money order transactions where payees were located within 72 hours was as follows (R. 17): The sender filled out a money order application form at the telegraph company's office of origin in Pennsylvania, paid the principal and tolls and got a receipt for the money. A telegraph message was then transmitted to appellant's office located nearest to the designated payee, directing that office to pay the principal amount of the money order to the payee in the form of a negotiable money order draft. Upon receipt of the message the office of destination prepared the money order draft and a notice to the payee. The payee, after being notified and appearing at the office, was given this draft. The payee then either endorsed the draft, handed it back and received cash in the amount specified, or if he preferred he took the draft with him to make such use thereof as he saw fit, in which event he was required to sign a receipt for the draft.

Where, as in many instances involved in the case at bar, no draft or payment was delivered to the payee, the procedure was as follows (R. 17-18): If the payee could not be located or if after being notified he failed to call

*Statement.*

for the draft within 72 hours, the office of destination transmitted a message to the office of origin advising the latter of the reasons for nonpayment. The office of origin then notified the sender to call at the office, where he received by way of refund a draft which he either endorsed and cashed immediately at the office or, if he preferred, carried away with him.

The moneys when received from senders were intermingled with other funds of appellant and were used to meet various operating requirements; any excess of such funds above operating needs was transferred to appellant's account at one of its thirteen fiscal and sub-fiscal agencies, none of which was located within Pennsylvania; and all money order drafts were drawn on one of these thirteen agencies outside Pennsylvania (R. 18-19, 20, 21, 23). Funds not used for local operating needs were eventually remitted to the appellant's Treasurer in New York (R. 25-26). By corporate practice before 1943, and under specific regulations of the Federal Communications Commission since then, funds representing the amounts of money order transactions not claimed within two years have been treated on appellant's books as income (R. 25-26).

Appellant in the vast majority of its money order transactions delivered drafts to the designated payee or to the sender if the payee could not be found (R. 29-30). The money order transactions here involved thus fall into one of two classes, namely, a vast majority as to which drafts have been issued and a small number as to which no drafts have been issued.

The judgment of escheat entered against the appellant is in the sum of \$39,857.74 (R. 57). This amount

*Summary of Argument.*

was arrived at by adding together \$6,755.49 of unpaid intrastate orders and \$33,853.82 of unpaid interstate money orders, originating in Pennsylvania but destined elsewhere, and by subtracting therefrom \$725.85 of items already paid to the State of New York under its Abandoned Property Law and \$25.72 paid subsequent to the institution of suit to payees of intrastate orders (R. 57, 55, 54, 31).

---

**SUMMARY OF ARGUMENT****I.**

The Pennsylvania escheat statute as here applied is repugnant to the due process clause of the Fourteenth Amendment because Pennsylvania has no contact with the funds. Payments were made for money orders at the appellant's offices in Pennsylvania not to create obligations at those offices but to create obligations to pay elsewhere. In almost every money order transaction the obligation was transformed into an obligation to pay a draft at a bank outside Pennsylvania. The drafts, under tariff regulations and also under Pennsylvania law, became the primary evidence of the obligations. Long before the Pennsylvania act was passed the funds to fulfill all of the unsatisfied obligations had passed into the appellant's treasury in New York and

The fact that someone not more than a transient from out-of-state paid money for transmission from a Western Union office in Pennsylvania does not alone give Pennsylvania such a contact as to justify escheat. Other states have more significant contacts. Under prior decisions of this

### *Summary of Argument.*

Court a known domiciliary contact has been the basis for jurisdiction to escheat. Here the State of New York alone has a proven domiciliary contact.

#### II.

The purported notice given pursuant to the Pennsylvania escheat statute did not satisfy due process requirements. Hence the appellant is entitled to raise the question of protection for itself against multiple liability. No property in Pennsylvania was brought under the control of the courts below. The escheat petition and the notice referred only to "moneys" or "amounts . . . refundable to the senders"; thus no effective notice was given to sendees or to holders of negotiable drafts. The published notice listed no names or addresses. Though last known addresses were of record, no mail notice was given; cf. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306.

#### III.

Only one state can escheat a fund. This Court should forestall the danger that recovery may be allowed in more than one suit while in point of fact or law only one party is entitled to succeed: cf. *Texas v. Florida*, 306 U.S. 398, 407. Full faith and credit is accorded solely to the escheat decree of the one state entitled to take. Because Pennsylvania is not that state the application of its escheat act here is repugnant to the Fourteenth Amendment.

The Pennsylvania act does not protect the appellant against multiple liability. Other states with better claims will seek to take the same amounts. Some have

*Summary of Argument.*

already laid claim to the funds involved. Others have recently enacted statutes under which they can be expected to make claims and sustain them in their own courts. Individual claimants may also subject the appellant to multiple liability. The Pennsylvania decree cannot give the appellant the protection against multiple escheat which would be afforded by a decree of its domiciliary state.

Even a strong declaration by this Court that the Pennsylvania decree is entitled to full faith and credit would not be of any practical protection to the appellant. The interests not only of appellant but also of claimant states and individuals can be properly protected only by a definite rule which either confines the right to escheat to a single state, such as the domiciliary state, or insures the recognition of superior claims through a custodial or similar procedure.

---

***Argument: Inadequate Contact.***

**ARGUMENT**

**I.**

**Pennsylvania's Contact with the Money Order Transactions Is Not Such as to Justify Escheat.**

The Western Union Telegraph Company, appellant here, is authorized to do business in all the states of the continental United States (R. 13) and is therefore subject to the jurisdiction of the courts of every such state. If its mere doing of business in a state were enough to sustain escheat by that state of unclaimed funds in the appellant's hands, the resulting race of diligence by fifty sovereignties to seize such funds would be anarchic, not merely undignified. Obviously some special contact or contacts are required before a state can have a right to escheat. Pennsylvania has no such contact here, and its escheat act, therefore, is in the instant application repugnant to the due process requirements of the Fourteenth Amendment.

Mr. Justice Musmanno's opinion for the court below posits Pennsylvania's asserted escheat power upon the appellant's transaction of business and subjection to personal service there, and upon the conclusion that "all the transactions which are the bases of [its] outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania" (R. 93, 400 Pa. 337, 343, 162 A. 2d 617, 621). Were this a savings bank case, like *Security Savings Bank v. California*, 263 U.S. 282, or *Anderson National Bank v. Lockett*, 321 U.S. 233, such a "deposit" analysis might be valid. But the payments here were not made to create obligations at the

*Argument: Inadequate Contact.*

offices of deposit in Pennsylvania. Their whole object was to create an obligation to pay elsewhere. In almost every case where cash payment was not ultimately accomplished, the obligation was transformed into an obligation to pay at a bank outside Pennsylvania. The funds to fulfill every unsatisfied obligation were transferred to the appellant's treasury in New York. In the instances involved in the present action, brought within five months after enactment of the Pennsylvania statute providing for escheat of these funds, they had actually been transferred out of Pennsylvania long before the statute was passed.

We submit that if any state has the power to escheat the moneys here involved, it is New York, the state of domicile of the only party to the transactions involved whose domicile is in evidence. The appellant's domiciliary state, although not a party to this proceeding, is claiming under its Abandoned Property Law (McKinney's Consolidated Laws of New York, Abandoned Property Law, §§ 1309 *et seq.*) a portion of the moneys affected by the decree below, and may claim all of them (R. 28-29).

In none of the transactions involved in this case were any money order drafts drawn on a bank or other fiscal agency located in Pennsylvania (R. 19). All drafts were drawn on New York or other banks located outside Pennsylvania (R. 18-19). The moneys received by the appellant in Pennsylvania were commingled with other funds and sent out of Pennsylvania (R. 20, 21, 23), eventually coming to rest in the hands of appellant's Treasurer in New York (R. 25-26). While the appellant maintains in Pennsylvania sufficient funds to meet daily



*Argument: Inadequate Contact.*

operating needs, the assets which back up its obligations under the negotiable drafts in this case and its obligations to repay senders in the rare cases where drafts were not issued, are located in New York (R. 26). By corporate practice before 1943 and under specific regulations of the Federal Communications Commission since that date, funds received by the appellant as principal on money order transactions have been, when no claim was made for them within two years after receipt, taken in on the books as current income (R. 25-26). All of the moneys involved in this case had, therefore, before suit was instituted and even before the Pennsylvania statute was passed, left Pennsylvania, gone to New York, metamorphosed into income and thus entered into the surplus and rate structure of this regulated utility. If these funds have any situs in or contact with any state, it is New York, the state of the appellant's domicile.

To overcome the fact that almost all of the funds originally received in Pennsylvania had been transformed into negotiable drafts on New York and other banks, the Pennsylvania Supreme Court asserted that these drafts "could not be regarded payment since there was no contract to that effect between the parties" (R. 96, 400 Pa. 337, 346, 162 A. 2d 617, 622). This conclusion is directly contradicted by the record.

The stipulation of facts (R. 17-18) clearly states that the amount of the money order was refundable only if the payee could not be located or if, although located and notified, the payee failed to pick up the draft within seventy-two hours. No refund was to be made to the sender if a draft had been issued to the payee.

*Argument: Inadequate Contact.*

That the appellant, as debtor, and the sender or payee, as creditor, contracted that the delivery of a negotiable draft constituted payment, is established by the provisions of the money order tariff regulations under which Western Union operates. These tariffs (R. 61-64) have uniformly provided that all payments are to be made by draft. The tariffs are required to be filed with the federal and state regulatory bodies (R. 14-15), are an essential and integral part of the contract, and are binding upon and fix the rules and obligations not only of Western Union but also of the senders and payees: *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 586; *Western Union Telegraph Co. v. Priester*, 276 U.S. 252. Upon delivery of a draft to the payee, the telegraph company's contract obligation to the sender is therefore fully performed. Under tariff regulations and as a purely practical matter, the appellant cannot thereafter pay money order funds to anyone except the holder of the draft.

The appellant's tariff regulations have at all times been consistent with Pennsylvania law as to the effect of delivery of a negotiable draft for a pre-existing indebtedness. The acceptance of a check, note or draft is, under Pennsylvania law, an absolute discharge of the original obligation only where there is a special agreement to this effect, but the tariff regulations constitute such an agreement. Even without such regulations, however, the issuance of a Western Union draft to a payee or to a sender would, at the very least, make the draft the primary evidence of the obligation. Though in the absence of a special agreement payment by delivery of a draft is only conditional payment, such payment is nonetheless payment, defeasible only on the dishonor or non-

*Argument: Inadequate Contact.*

payment of the draft. Only in the event of dishonor or nonpayment of the draft can the creditor sue the debtor on the underlying debt. Such has been the rule in Pennsylvania for a great many years: *Holmes v. Briggs*, 131 Pa. 233, 240, 18 Atl. 928, 929 (1890); *S. A. Gerrard Co. v. Tradesmen's National Bank & Trust Co.*, 318 Pa. 100, 103, 177 Atl. 760, 761 (1935); *Gehringer v. Real Estate-Land Title and Trust Co.*, 321 Pa. 401, 404, 184 Atl. 100, 102-103 (1936); *Wendkos v. Scranton Life Ins. Co.*, 340 Pa. 550, 553, 17 A. 2d 895, 897 (1941). The Pennsylvania Uniform Commercial Code, Act of April 6, 1953, P.L. 3, § 3-802, as amended (12A Purdon's Statutes § 3-802), was not in effect at the time of the money order transactions involved in this case; yet it is interesting to note that it does not effect any basic change in the Pennsylvania law: it provides that "where an instrument is taken for an underlying obligation . . . the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment."

So long as a negotiable draft is outstanding, a claim for refund against Western Union could be properly made only by presentment of the draft or otherwise by accounting satisfactorily for it. Western Union has never in its history made a refund payment to a sender where a negotiable draft has been issued to the designated payee (R. 27) and, until the opinion of the court below was filed, no court or regulatory commission had ever suggested that it might be obligated to do so. Any such obligation would completely disrupt the appellant's nationwide money order service and expose it to liability to senders, running into millions of dollars annually, in instances where negotiable drafts issued to payees had not yet been presented for payment.

*Argument: Inadequate Contact.*

As a matter of law and as a matter of practice under the official tariffs, Western Union's drafts, immediately upon their issuance and delivery, become the essential evidence of its obligation to pay. The obligation in each case travels with the negotiable draft.

Both under general rules of law and under the applicable tariff regulations, it is clear that Pennsylvania ceased to have any real connection with the money order transactions here involved before either its legislature or its escheator attempted to seize the moneys transmitted. The mere fact that someone who may or may not be a resident of Pennsylvania now, who may or may not have been a resident of Pennsylvania at the time of the transaction, who may in fact have merely been passing through Pennsylvania or staying for a few days in temporary lodgings in Pennsylvania, paid in money for transmission at a Western Union office in Pennsylvania does not give that state any significant contact with or dominion over that money. In cases where the intended payee received a draft outside Pennsylvania, the appellant's obligation moved out of the state with all the speed of electricity. Where the payee or the sender received a negotiable draft within Pennsylvania, the appellant's obligation moved instantaneously to the place of payment of the draft, which in every case was outside Pennsylvania. Even in the rare cases where no draft was issued and where the appellant's obligation to repay the sender was therefore not negotiable, there is nothing in the record to show that that obligation has any situs for escheat in Pennsylvania, since the residence of the sender is not known and the actual money involved has long since found its way to New York. Pennsylvania's contact with all of these transactions was indeed

*Argument: Inadequate Contact.*

ephemeral. It cannot be compared to the contacts of a state where the funds involved are held or are demandable under the terms of the negotiable instrument. It cannot begin to be compared with the contacts of a state where the debtor is domiciled and where the moneys involved have been received and taken into income.

A holding that Pennsylvania does not have jurisdiction to cause the escheat of the funds involved in this case is, we submit, required by the principles with regard to escheat jurisdiction over corporate property to which this Court has consistently adhered. In *Standard Oil Co. v. New Jersey*, 341 U.S. 428, *Anderson National Bank v. Lockett*, 321 U.S. 233, and *Security Savings Bank v. California*, 263 U.S. 282, it was decided that the state of corporate domicile or the state where a bank is located has the power to escheat property held by the corporation or bank, even though claimants of the property might or might not be residents of the state. In *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, this court decided only that a state could escheat funds of foreign corporations in instances where the possible claimants were at the time of escheat residents of that state. In *United States v. Klein*, 303 U.S. 276, funds actually on deposit in a court were held to be escheatable by the state in which the court was located; in effect, this was a recognition of a domiciliary situs.

In every case the determination of escheat jurisdiction has depended upon a known domiciliary fact. In the case at bar the only domiciliary fact is that appellant's domicile is in the State of New York. The domiciles of senders, payees and other possible claimants are not known. Under this Court's decisions, therefore, New

*Argument: Inadequate Notice.*

York is the only state which can take by escheat the funds which Pennsylvania is now claiming.

Not only do the decisions of this Court sustain this conclusion, but there are also other urgent and compelling reasons why a domiciliary state alone should have escheat jurisdiction. The increasing number of state statutes which seek to escheat every conceivable type of unclaimed assets demands a workable, definite and practical rule. The alternative is interstate squabbles, races to different courthouses, and multiple escheats. Where, as in the case at bar, the domicile of the last known owner cannot, as a practical matter, be discovered, the only practical rule for determining the existence of escheat jurisdiction is to fix the situs at the domicile of the corporation proceeded against. Since Pennsylvania is not shown to be the state of domicile of either the senders or the payees in any money order transactions, nor the state of domicile of the appellant Telegraph Company, but merely the place where someone first paid money which has since moved out of the jurisdiction, Pennsylvania should be held not to have power to escheat.

**II.**

**The Notice Purportedly Given Did Not Satisfy the Requirements of Due Process.**

Notice other than by personal service in a case such as that at bar can be justified only when there has been seizure or attachment of a *res*. Even then due process requires that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Here there was no seizure or attachment of a *res*, no mention in the published form of notice of



*Argument: Inadequate Notice.*

the names of any claimants, no attempt to give notice by mail to possible claimants whose last known addresses were available, and not even any reasonably clear description of property thereafter included in the escheat decree. For these reasons the proceedings violated the due process requirements of the Fourteenth Amendment.

As we shall explain in the last section of this brief, the inadequacy of the notice procedure in several respects exposes the appellant telegraph company to the risk of double escheat or double payment. If this escheat statute effectively relieved appellant of its liability to others, it could not complain of the inadequacy of notice here. "But if the statute is deficient in its provisions for notice and opportunity for hearing so that [claimants] would not be bound by any proceedings taken under it, the [appellant] would be entitled to raise the question whether its obligation to [claimants] would be discharged by payment of the deposits to the state. Hence our inquiry must be directed to the question whether the procedure by which the state undertakes to acquire the [claimants'] right to demand payment of the deposits was upon adequate notice to them and opportunity for them to be heard": cf. *Anderson National Bank v. Lockett*, 321 U.S. 233, 242-243.

In proceedings to escheat personalty, seizure of a *res* by the escheator, whether the *res* be tangible or intangible, is a fundamental prerequisite for the giving of notice by publication. Substituted service in lieu of personal service is "permissible only where '*property in the State* is brought under the control of the court, and subjected to its disposition by process adapted to that purpose:' " *Hanson v. Denckla*, 357 U.S. 235, 250; *Pennoyer v. Neff*, 95 U.S. 714, 727-728, 733; *Hollingsworth v. Bar-*



*Argument: Inadequate Notice.*

*bour*, 4 Pet. 466, 475; *Scott v. McNeal*, 154 U.S. 34, 46; *Hamilton v. Brown*, 161 U.S. 256, 274. This is borne out by *Security Savings Bank v. California*, 263 U.S. 282, where the State of California sought to escheat deposits in a bank which was a California corporation and had its only place of business there. The petition for escheat was directed against the deposits that were actually in the bank in its place of business in California. Since there was a seizure of the deposits, publication by notice was held good as to the depositors, the court stating (p. 287) :

"[T]he essentials of jurisdiction over the deposits are that there be seizure of the *res at the commencement of the suit*; and reasonable notice and opportunity to be heard." (Italics supplied.)

Likewise, in *Anderson National Bank v. Lockett*, 321 U.S. 233, 245, the state at the commencement of the proceedings seized bank deposits in a bank within the state, and the posting of notice to depositors upon the door of the courthouse in the county in which the bank was located was held to be adequate notice on the ground that: "the seizure of the property is in itself a form of notice of the claim asserted, to those who may claim an interest in the property."

In the case at bar the petition for escheat (R. 1-3) nowhere referred to the property to be escheated other than as "moneys received by the defendant". The notice published once in three newspapers and posted in the prothonotary's office defined the property to be escheated as "amounts held and owing by The Western Union Telegraph Company . . . arising from the receipt by it of various sums from divers persons for transmit-

*Argument: Inadequate Notice.*

tal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the sendees" (R. 12). Neither the escheat petition nor the escheat notice referred to anything having a situs in Pennsylvania.

To overcome the difficulty created by the insufficiency of the escheat petition and escheat notice, the opinion of the Pennsylvania Supreme Court said that the state was asking only "for the fiscal equivalent of that money" (R. 91, 400 Pa. 337, 341, 162 A. 2d 617, 619). In effect the court below said that the petition and notice referred not to money in the specific sense, but rather to obligations to pay money, which obligations in this case were in almost every instance evidenced by negotiable instruments. The Pennsylvania Escheat Act of July 29, 1953, P. L. 986, § 5(a), (27 Purdon's Statutes § 111(a)), defines "property" as used in that statute to include not only "moneys" but also "negotiable instruments, . . . instruments of indebtedness not under seal, . . . choses in action, claims, debts, demands, . . . and every other form of personal property tangible or intangible, and all interests therein, whether legal or equitable". When Pennsylvania, despite its broad statute, purports to seize only "moneys," it would be difficult for the appellant to persuade a court in another state that obligations to pay, evidenced by negotiable drafts, had been taken by Pennsylvania and could not be seized a second time. And even if the word "moneys" could be so broadly extended, not one of the negotiable drafts was payable in Pennsylvania or supported by funds on deposit in Pennsylvania. There was nothing to be seized in Pennsylvania. No *res* was seized or attached in this case and therefore notice by publication was ineffective.

*Argument: Inadequate Notice.*

Even if notice other than by personal service could have been justified in this case, the published notice was completely inadequate to alert anyone, even the rare person who reads such things, to the fact that what was to be escheated was, for the most part, obligations evidenced by negotiable drafts. The notice (R. 12) as quoted above defined the property to be escheated as "amounts held and owing by The Western Union Telegraph Company . . . and refundable to the senders because the defendant could not effect payment to the sendees . . ." This language does not cover the holder of a negotiable draft, particularly if, as in the great majority of the cases, he had not been the sender in the money order transaction involved. Even if such a holder chanced to read the fine print in a Philadelphia, Pittsburgh or Harrisburg newspaper, or chanced to be in the office of the Dauphin County prothonotary and had the curiosity to read the notice on the bulletin board, he would not be apprised that this notice had anything to do with him. After all, he would have his draft. This was his payment. Why then should he believe that the Pennsylvania courts would escheat his rights under that draft as something "refundable to the senders"? The form of notice would not notify him of anything. Rather it would deceive him.

A published notice which is intended to notify rather than deceive, to be effective rather than a mere sham, should at the least give the names of the last known claimants to funds about to be escheated. When the individual sums are very small, the necessity for printing such names in a newspaper could, of course, be dispensed with where the cost of publication is disproportionate to the amount involved. For every sizable amount, however, names should be printed. The dollar

*Argument: Inadequate Notice.*

amount at which the line should be drawn may vary according to the expense of publication in the jurisdiction, but the acts of various states summarized in Appendix B at the end of this brief show that any amount over \$25 or thereabouts deserves the publication of the last known owner's name, and perhaps his address as well. Even Pennsylvania, in other types of escheat proceedings, requires mail notice, regardless of the amount involved, and publication of names and addresses for items of \$10 or over in some cases, Act of June 7, 1915, P. L. 878, § 6, as amended (27 Purdon's Statutes § 281), Act of June 25, 1937, P.L. 2063, § 5 (27 Purdon's Statutes § 438), and for items of \$50 or over in another, Act of May 11, 1949, P. L. 1140, § 5 (27 Purdon's Statutes § 465). This widespread practice of requiring the printing of names reflects common ideas of fairness and due process, which were ignored in the case at bar.

Even where the expense of publication of a possible claimant's name is too great, the three-cent expenditure for a post card notice is certainly not too great. Pennsylvania has recognized this in other types of escheat proceedings: see the statutes cited in the paragraph next above. The list of unpaid money order claimants which was available in the case at bar (an example of which is printed at R. 59-60) contained the addresses, as well as the names, of most of the possible claimants. In all fairness to these persons, though their claims might be for as little as \$1.00 in some instances, they should have been sent at least a personal notice by a three-cent post card. At least some of these notices would have reached interested parties by forwarding or otherwise. Some of the payees of drafts, as can be seen from an inspection

*Argument: Inadequate Notice.*

of the names and addresses of payees at R. 59-60, would clearly be found at their original addresses.

"Exceptions in the name of necessity do not sweep away the rule that within the limits of practicability notice must be such as is reasonably calculated to reach interested parties. Where the names and post-office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.

\* \* \* \* \*

"The statutory notice to known beneficiaries is inadequate, not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand. However it may have been in former times, the mails today are recognized as an efficient and inexpensive means of communication.

\* \* \* \* \*

"In some situations the law requires greater precautions in its proceedings than the business world accepts for its own purposes. In few, if any, will it be satisfied with less. Certainly it is instructive, in determining the reasonableness of the impersonal broadcast notification here used, to ask whether it would satisfy a prudent man of business, counting his pennies but finding it in his interest to convey information to many persons whose names and addresses are in his files. We are not satisfied that it would. Publication may theoretically be available for all the world to see, but it is too much in our day to suppose that each or any individual beneficiary

*Argument: Inadequate Notice.*

does or could examine all that is published to see if something may be tucked away in it that affects his property interests. We have before indicated in reference to notice by publication that, 'Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact.' "

*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318, 319-320. See also *Walker v. Hutchinson*, 352 U.S. 112, 116.

The rules of fair play and due process were disregarded in the Pennsylvania escheat proceedings here. The Pennsylvania procedure for escheat is a greedy one, granting claimants neither the right to a three-cent postcard notice nor even the right to a reasonably specific notice by publication. The proceeding seems almost designed to deceive, rather than to inform, the real owner of the property to be escheated. In the case at bar it was not even based upon the seizure or attachment of any *res*. That the Pennsylvania statute as applied here does not allow adequate notice to possible claimants is perhaps but a result of a more basic defect, which is Pennsylvania's lack of adequate contacts on which to ground "situs" jurisdiction: cf. *State of New Jersey v. Western Union Telegraph Co.*, 17 N.J. 149, 158-161, 110 A.2d 115, 119-121 (1954). Either of these inadequacies is enough to render the Pennsylvania act repugnant to the Fourteenth Amendment.



**III.****The Pennsylvania Decree Does Not Protect the Appellant Against Future Claims.**

The Pennsylvania Escheat Act involved in this case is not a mere custodial statute. It takes for Pennsylvania the escheated fund, and all of it. If other states or individual claimants sue for the fund involved in the same money order transactions, the appellant will have to pay again unless Pennsylvania alone was entitled to take the sums involved. The appellant would not be protected by the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1, if Pennsylvania did not have sole jurisdiction to escheat. The resulting subjection of the appellant to multiple liability renders Pennsylvania's statute unconstitutional under the due process provisions of the Fourteenth Amendment.

The principal amounts of the money orders, which Pennsylvania seeks to escheat, may be claimed by other states on the ground that these states are or at one time were the location of the payees of the money orders, or of the drafts given in payment of the money orders, or of the banks on which these drafts were drawn. New York can press a potent claim as appellant's chartering state and as the state where the funds were ultimately taken into appellant's treasury and accounted for as current income. If the claim of more than one of these states were upheld, to the extent of the escheats in excess of the total amount involved the appellant would be deprived of its property without due process of law. The case is not like the double-taxation cases, where less



**Argument: Multiple Liability.**

than the whole is taken. This Court should forestall the danger that recovery may be allowed in more than one suit "while in point of fact or law only one party is entitled to succeed": cf. *Texas v. Florida*, 306 U.S. 398, 407. It should protect the appellant and all claimants "from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject": *ibid.*

Because Pennsylvania's contact with these money order transactions is so ephemeral, it is not unrealistic to visualize future claims pressed by other states whose contacts with the money order drafts, the payees of the drafts, or the banks on which drafts were drawn are much more impressive than those of Pennsylvania. We do not think it necessary to suggest that the claims of these other states might be motivated by something other than solicitude for the interests of the true owners of the property: cf. dissenting opinion of Jackson, J., in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, at p. 563. Suffice it to say that it would be impractical not to assume that other revenue-eager states will seek to take for their own exchequers the appellant's obligations arising out of money order transactions: cf. dissenting opinion of Frankfurter, J., *ibid.*, at pp. 552, 554-555.

Some states have already laid claim to the funds here in question. A claim for similar moneys has been presented to the appellant by Massachusetts under its Abandoned Property Law, Massachusetts General Laws, Chap. 200A (R. 28). New York has taken by escheat some of the funds claimed by Pennsylvania (R. 47), and additional amounts have been reported under the New York Abandoned Property Law but have not yet been actually escheated (R. 57). The lower court here made

*Argument: Multiple Liability.*

no allowance for the latter items, although it did permit deduction of \$725.85 actually paid to New York. Even as to this sum the court stated: "We do not recognize New York's authority to escheat that money" (R. 47).

Attempts by states to escheat are not easily discouraged. The ruling favorable to the appellant in *State of New Jersey v. Western Union Telegraph Company*, 17 N.J. 149, 110 A. 2d 115 (1954), may not put to rest the claims of New Jersey. Despite the strong warnings as to constitutional limitations in the opinion in that case, the court based its decision on grounds which have been removed by the enactment of an alternative escheat procedure (N. J. Rev. Stat., Title 2A, §§ 37-29 *et seq.*), which would apply to any funds unclaimed for five years and not barred by the six-year statute of limitations. See *State of New Jersey v. Sperry & Hutchinson Co.*, 23 N.J. 38, 127 A. 2d 169 (1956).

In recent years many other states have enacted unclaimed or abandoned property escheat statutes. These statutes are tabulated in Appendix B at the end of this brief. It can be expected that legislatures in other states will continue the trend and that eventually most, if not all, of the states will have similar statutes. All of the state statutes so far enacted are broadly drawn and might conceivably be used to claim some of the amounts involved in the case at bar. If a state with as flimsy a claim as Pennsylvania's could escheat these amounts, it could be expected that many other states would go after the same easy revenue.

Having decided to escheat, these claimant states can assert several explanations of why the prior Penn-

**R.S. 4:35-1 as amended**

<b>New Mexico</b>	<b>Yes</b>			
Stats. Ann. § 22-22-1				
Laws 1959, c. 132 § 1				
<b>New York</b>	<b>Yes (5)</b>	<b>No</b>	<b>No</b>	<b>No</b>
Abandoned Property				
Law § 1309				
Added L. 1949 c. 824 as amended				
<b>North Carolina</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>
Gen. Stats. § 116-23				
1957, c. 1049				
<b>Oklahoma</b>	<b>Yes</b>	<b>Yes (names only)</b>	<b>No (1)</b>	<b>No</b>
Stats. Ann., Tit. 84				
§ 271				
R.L. 1910 § 8436 as amended				
<b>Oregon</b>	<b>Yes</b>	<b>Yes (6)</b>	<b>Yes (6)</b>	<b>No</b>
R.S. § 98.302				
1957 c. 670 § 3				
<b>Texas</b>	<b>Yes</b>	<b>Yes (names only)</b>	<b>No (1)</b>	<b>No</b>
9 A Vernon's Civil				
Stat. § 3272				
Acts 1855, p. 35 G.L., as amended				
<b>Utah</b>	<b>Yes</b>	<b>Yes (2)</b>	<b>Yes (2)</b>	<b>No</b>
Code Ann. 78-44-1				
1957 c. 6 § 1				
<b>Virginia</b>	<b>Yes</b>	<b>Yes (2)</b>	<b>Yes (2)</b>	<b>No</b>
Code § 55-210.1				
1960 c. 330				
<b>Washington</b>	<b>Yes</b>	<b>Yes (2)</b>	<b>Yes (2)</b>	<b>No</b>
Rev. Code § 63.28.010				
1955 c. 385 § 1				

- (1.) Service of summons required if within jurisdiction.
- (2.) Only on items of \$25 or more.
- (3.) Only applies to bank accounts in excess of \$5.
- (4.) Only applies to unclaimed insurance funds in excess of \$50.
- (5.) Yearly in state bulletin.
- (6.) Only on items of \$50 or more.

*Argument: Multiple Liability.*

sylvania escheat does not bind them. Since the property involved here was not located in Pennsylvania, as shown in the first part of this brief, those states may justifiably contend that Pennsylvania had no jurisdiction to escheat, and will disregard the Pennsylvania decree. In addition, they can contend that Pennsylvania did not escheat the negotiable drafts which the claimant states assert the right to take. The petition, notice and decree in Pennsylvania refer only to "moneys" and do not purport to escheat, cut off or determine claims, debts, or demands of holders of negotiable instruments located in other states or reserves which have been taken into income in the appellant's treasury in the chartering state of New York. The decree (R. 57) directs that a judgment of escheat be entered for an amount of money equivalent to that paid by senders of money orders. Furthermore, since the Pennsylvania statute refers not only to "moneys" but also to "negotiable instruments, . . . choses in action, claims, debts, demands", Act of July 29, 1953, P.L. 986 § 5(a) (27 Purdon's Statutes § 111(a)), courts of other states could refuse to "adopt a strained reading which renders one part" of the Pennsylvania Act "a mere redundancy", *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307-308, and assume that the Pennsylvania decree was not intended to escheat anything except money located in Pennsylvania.

An escheat decree like that of Pennsylvania cannot give the appellant the protection against duplicative claims which is afforded by the decree of a domiciliary state: cf. *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 443; *Canada Southern R. Co. v. Gebhard*, 109 U.S. 527, 537-538. The recent popularity of abandoned property statutes and the growing desire of the states for easy

***Argument: Multiple Liability.***

revenue demonstrate that the appellant's fear of multiple escheat is not unfounded.

The possibilities of multiple escheat do not exhaust the possibilities of multiple liability for the appellant in this situation. Individual claimants, particularly those who hold negotiable paper evidencing appellant's obligation to pay, might very well persuade the courts of their home states to honor their claims, despite a prior Pennsylvania decree of escheat. Such claimants, in addition to the assertions that Pennsylvania did not purport to escheat the negotiable instruments and that Pennsylvania had insufficient contacts with the transactions to permit escheat of anything, could also make the very appealing argument that the notice given by Pennsylvania was inadequate to bind them. Local courts, we submit, would be quick to appreciate the equities of such claimants.

Even a strong declaration by this Court that Pennsylvania's victory in the race to escheat would cut off future claims of other states and individuals would not be any practical protection to the appellant here. A series of nibbling attacks by other states and by individuals could subject the appellant to multiple liability in such a manner that the remedy of appeal to this Court would be economically and practically worthless. Encouraged by the success of Pennsylvania's search for escheat revenue, a swarm of other states could be expected to bring claims based on other aspects of the same money order transactions. Conceivably no one of these claims might involve a sum justifying the cost of an appeal, yet the total effect of paying off a host of small claims twice or three times or more, or of defending

*Argument: Multiple Liability.*

those claims in courts of first instance, could be a major burden to the appellant.

It is not only for the appellant's sake that we press this plea for a realistic and practical disposition of Pennsylvania's claim in the case at bar. The unnecessary labor and expense to which the appellant might be subjected, if Pennsylvania were allowed to escheat these funds and others were thus encouraged to follow a similar course, would be at least matched by the burden placed on other courts and eventually on this Court. In addition, there is to be considered the labor and expense which would be involved for states other than Pennsylvania, and the possible prejudice to their superior rights. If this Court were to decide that a state with as tenuous a claim as Pennsylvania's had a right superior to, and could cut off, the rights of other states because of mere priority in time, then unnecessary and duplicative diligence in pressing escheat claims would burden all of the states collectively, while rewarding only the winner in the race to the courthouse. That winner would not necessarily be the state with the most equitable claim: the race would be to the swift, though the battle would not be to the strong.

If diligence in the race, or mere good fortune, were to be the sole determinant of the proper forum for disposition of unclaimed property, it should be recognized as such only provided other states, and other possible claimants, could have an opportunity to participate in the litigation. The Pennsylvania legislation does not furnish such an opportunity. Only a custodial statute or some other arrangement whereby adjustment of conflicting interests could be had would take care of such a situation: cf. *Texas v. Florida*, 306 U. S. 398, and dis-

*Argument: Multiple Liability.*

senting opinions in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, at 555-556, and *Standard Oil Co. v. New Jersey*, 341 U.S. 428, at 444-445, 445.

Fairness to the appellant and among claimant states and individuals demands a fixed, definite rule which either confines the right to escheat to a single state having clear contacts with the property (such as the domiciliary state) or else forbids any proceeding which does not insure opportunity for superior claims to be successfully asserted (as under a custodial statute). Approval of any other procedure, such as that prescribed by the Pennsylvania legislation, can result only in confusion, unseemly contention, and unfairness. For one in the appellant's position it could only result in a denial of due process of law through exposure to multiple liability and harassment.



*Conclusion.***CONCLUSION**

The Pennsylvania escheat statute as here applied is repugnant to the due process clause of the Fourteenth Amendment because Pennsylvania has no such contact with the funds as to justify escheat and because the purported notice was inadequate. The decree made pursuant to the statute subjects the appellant, in contravention of due process, to multiple liability. The decree should be reversed.

Respectfully submitted,

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**APPENDIX A****Pertinent Pennsylvania Statutes**

Act of July 29, 1953, P.L. 986, § 1 (27 Purdon's Statutes § 333), subsections (b), (c) and (d):

"(b) Whensoever the owner, beneficial owner of, person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

"(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same."

*Appendix A.*

Act of May 2, 1889, P.L. 66, §8 (27 Purdon's Statutes §43), subsection (a) :

"That whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction in the premises shall upon the filing of any account or statement by any administrator, executor, depository of the court, receiver or other officer of the court, or of any trustee or other person in a fiduciary capacity, of any property or estate, real or personal, escheated or supposed to be escheated, proceed to the audit and adjudication of said account or statement in the same manner as the said court commonly proceeds upon the audit and adjudication of the accounts of executors, administrators and trustees; and shall upon said audit, proceed to inquire and determine whether there has been any escheat or not, and if so, in what manner and for what cause said escheat has occurred, and also what estate, real or personal, has escheated, and what is the value thereof. And the said court shall, in all cases where any real estate has escheated or is alleged to have escheated, before proceeding finally to hear and determine the question of escheat, order and direct notice of said proceedings to be served upon the person or persons in possession of said real estate, in such form as the court shall direct, and the said court shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or thing touching said escheat, and shall suffer and permit the

*Appendix B.*

escheator and all parties claiming to have any interest in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses under oath or affirmation, as they may see fit, touching said escheat, and the said court shall make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

Act of July 29, 1953, P.L. 986, § 5 (27 Purdon's Statutes § 111), subsections (a) and (b):

"(a) The term 'real or personal property', as used in this act, shall mean and include all real property and all interests therein, whether legal or equitable, and moneys, negotiable instruments, instruments of indebtedness under seal, instruments of indebtedness not under seal, mortgages, choses in action, claims, debts, demands, shares of capital stock or other rights in corporations, dividends, deposits, and every other form of personal property, tangible or intangible, and all interests therein, whether legal or equitable.

"(b) The term 'beneficial owner', as used in this act, shall mean and include any beneficial owner, cestui que trust, depositor, bailor, or other person having a beneficial interest in real or personal property."

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## Appendix B.

## APPENDIX B

Abandoned Property Laws of States Other  
Than Pennsylvania

<u>State</u>	<u>Publication Required</u>	<u>Publication Must Contain Names and Addresses</u>	<u>Mail Notice Required to Last Known Address</u>	<u>Public Posting Required</u>
<b>Alaska</b>	Yes	Yes (names only)	No (1)	No
Compiled Laws § 57-8-8				
L 1921, c. 40 § 8				
as amended				
<b>Arizona</b>	Yes	Yes (2)	Yes (2)	No
R.S. § 44-353				
Added Laws 1956,				
c. 126 § 1				
<b>Arkansas</b>	Yes	No	No	No
Statutes 1947 § 50-601				
Acts 1949, No. 229 § 1				
<b>California</b>	Yes	Yes (2)	Yes (2)	No
CCP § 1500				
Added Stats. 1959,				
c. 1809 § 2				
<b>Connecticut</b>	Yes (3) (4)	Yes (3) (4)	Yes (3)	No
Gen. Stats. § 3-56				
1949 R.S. § 148				
<b>Idaho</b>	Yes	Yes (2)	Yes (2)	No
Code § 14-501				
1961, c. 162 § 1				
<b>Kentucky</b>	Yes	Yes	No	Yes
R.S. § 393.090				
1960 c. 142 § 8				
<b>Louisiana</b>	No	No	No	No
R.S. § 9:151				
Acts 1958, No. 507 § 1				
<b>Massachusetts</b>	Yes	Yes (2)	Yes (2)	No
Ann. L. C. 200A § 1				
1950, 801 § 1 as amended				

Acts 1958, No. 507 § 1				
Massachusetts	Yes	Yes (2)	Yes (2)	No
Ann. L. C. 200A § 1				
1950, 801 § 1 as amended				
Michigan	Yes	Yes (names only)	No	Yes
Stats. Ann. § 26.1053				
Act 239, 1947, as amended				
Montana	No	No	No	No
Rev. Code 91-501				
L. 1943, c. 181 § 1 as amended				
New Jersey	Yes	Yes	No	Yes
2A N.J.S.A. § 37-1				
R.S. 2:53-1 as amended				
New Mexico	Yes	Yes (2)	Yes (2)	No
Stats. Ann. § 22-22-1				
Laws 1959, c. 132 § 1				
New York	Yes (5)	No	No	No
Abandoned Property				
Law § 1309				
Added L. 1949 c. 824 as amended				
North Carolina	Yes	No	No	No
Gen. Stats. § 116-23				
1957, c. 1049				
Oklahoma	Yes	Yes (names only)	No (1)	No
Stats. Ann., Tit. 84				
§ 271				
R.L. 1910 § 8436 as amended				
Oregon	Yes	Yes (6)	Yes (6)	No
R.S. § 98.302				
1957 c. 670 § 3				
Texas	Yes	Yes (names only)	No (1)	No
9 A Vernon's Civil				
Stat. § 3272				
Acts 1855, p. 35 G.L., as amended				
Utah	Yes	Yes (2)	Yes (2)	No
Code Ann. 78-44-1				
1957 c. 6 § 1				
Virginia	Yes	Yes (2)	Yes (2)	No
Code § 55-210.1				
1960 c. 320				

Office Supreme Court  
FILED

OCT 4 1961

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**In The  
Supreme Court of the United States**

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**October Term, 1961  
No. 15**

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**THE WESTERN UNION TELEGRAPH  
COMPANY,**

*Appellant*

**vs.**

**THE COMMONWEALTH OF PENNSYLVANIA,  
BY SIDNEY GOTTLIEB, ESCHEATOR,**

*Appellee*

---

**APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA**

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**BRIEF FOR APPELLEE**

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## TABLE OF CONTENTS

	PAGE
<b>BRIEF FOR APPELLEE:</b>	
Counter-Statement of Questions Involved . . . . .	1
Counter-Statement of the Case . . . . .	2
Summary of Argument . . . . .	5
<b>Argument:</b>	
1. Were the contacts of Pennsylvania sufficient . . . . .	8
2. Did the statute and proceedings comply with due process . . . . .	21
3. Does the judgment in escheat come within the Full Faith and Credit Clause . . . . .	35
Conclusion . . . . .	47

## TABLE OF CITATIONS

<b>CASES:</b>	
American Land Co. v. Zeiss, 219 U.S. 47, 67 . . . . .	30
American Loan & Trust Co. v. Grand Rivers Co., 159 F. 775 . . . . .	44
Anderson National Bank v. Lockett, 321 U.S. 233 . . . . .	26, 27, 28, 36, 38, 46
Blackstone v. Miller, 188 U.S. 189 . . . . .	14, 21
Commonwealth v. Reeder, 171 Pa. 505 . . . . .	45
Connecticut Mutual Life Ins. Co. v. Moore, 297 N.Y. 1 . . . . .	8, 12, 13, 41, 42
Connecticut Mutual Life Ins. Co. v. Moore, 333 U.S. 541 . . . . .	8, 11, 43, 46
Hollingsworth v. Barbour, 29 U.S. 466 . . . . .	27

International Shoe Co. v. Washington, 326 U.S. 310 .....	9, 40
Isaacs v. Hobbs, 282 U.S. 734 .....	35, 36
Matter of Peoples, 242 U.S. 148 .....	12, 41
Moscow Fire Ins. Co. v. Bank of New York, 280 N.Y. 286 .....	13, 41
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 .....	6, 27, 31
New Jersey v. U. S. Steel Corp., 12 N. J. 38 .....	19
Norske Lloyd Ins. Co., 242 N.Y. 148 .....	12, 41
Ownbey v. Morgan, 256 U.S. 96 .....	26
Security Savings Bank v. California, 263 U.S. 282 .....	15, 21, 28, 36, 38, 46
Standard Oil Co. v. New Jersey, 341 U.S. 428 .. 6, 13, 15, 20, 22, 25, 28, 31, 37, 40, 44, 45, 46	
Tranter v. Allegheny County Authority, 316 Pa. 65 .....	45
U. S. v. Klein, 106 F. 2d 213 .....	15
U. S. v. Klein, 303 U.S. 276 .....	44, 46
U. S. v. Klein, 308 U.S. 618 .....	15
Wabash R. R. Co. v. Adelbert College, 208 U.S. 38 .....	35
Wheeler v. Smith, 9 How. 55 .....	45
Williams v. Armroyd, 7 Cranch (11 U.S.) 432 .....	36

#### CONSTITUTION AND STATUTES:

McKinney's Consolidated Laws of New York, Abandoned Property Law .....	43
Pennsylvania Escheat Statute:	
Act of May 2, 1889, P. L. 66, Sec. 3 .....	14
Act of May 2, 1889, P. L. 66, Sec. 8 .....	30
Act of July 29, 1953, P. L. 986, Sec. 1 .....	14
United States Constitution, Art. IV, Sec. 1 .....	6, 35
U. S. Act of Congress, May 26, 1790, c. 11 .....	35

COUNTER-STATEMENT OF QUESTIONS  
INVOLVED

---

1. Were the contacts of the Commonwealth of Pennsylvania with the transactions in this case sufficient to support the judgment of escheat to the Commonwealth of the obligations arising from such transactions?

2. Did the Pennsylvania escheat statute and the proceedings herein in the court below under the said statute comply with the due process clause of the Fourteenth Amendment to the Constitution of the United States?

3. Does the judgment in escheat herein come within the Full Faith and Credit Clause?

## COUNTER-STATEMENT OF THE CASE

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The appellant, The Western Union Telegraph Company, is a New York corporation, and operates throughout the United States.

Part of appellant's business is what it calls a "telegraph money order service". In the course of this service, it receives money at any one of its offices from persons who wish to send money to other persons, and, for a charge, transmits the money to the other persons by means of the telegraph money order service.

The transmission of money by telegraph money orders is substantially as follows:

The person who wants to send money to another comes to a Western Union office and fills out one of the latter's printed application forms, variously denominated in the forms as a "Money Transfer" (R. 65, 69) or a "Money Order" (R. 75). The sender then gives the appellant's clerk the amount to be sent, together with appellant's charges, as calculated by the clerk (R. 17). The printed form of application in each case states that if payment can not be made within a specified time (72 hours in most cases, 5 days or 10 days in all other cases), the money order will be canceled and refund made to the sender (R. 85, 86, 87). This provision for refund does not include the appellant's charges.

Upon receiving the amount of the money order from the sender, together with the amount of appellant's

charges, the appellant's clerk telegraphs to the company's office geographically nearest the payee named in the money order, directing that office to make payment of the specified amount to the named payee.

In most cases, payment is effected. In a number of instances, however, payment of the moneys to the payee can not be effected within the period of 72 hours, or 5 or 10 days, as the case may be, and the senders are then entitled to a refund of the amount of their money orders. Again, in most cases, refund to the senders is effected. In a number of instances, however, refund can not be effected.

The appellant has for a long time been authorized to do business in Pennsylvania, and has carried on its money order service in Pennsylvania. The present case relates to instances in which the appellant, at its places of business in Pennsylvania, received moneys from persons in Pennsylvania for transmittal to other persons, some in Pennsylvania, some outside Pennsylvania, and was unable to effect payment to the payees within the specified time of 72 hours, or 5 days or 10 days, and was also unable thereafter to effect refund to the senders.

More than seven years have elapsed since those senders have been entitled to the refund. During the said period, the whereabouts of the persons entitled to the amounts of the money orders have been unknown, and the said amounts have been unclaimed.

Under the provisions of the Pennsylvania escheat statute, the Commonwealth filed a petition for escheat in the court having jurisdiction under the statute, naming the appellant as respondent.

The respondent filed an answer, setting up issues of fact and raising questions of law.

The court entered an order, fixing a time and place for hearing, and directing that notice of the time and place fixed for hearing be given by posting and publication, in a form prescribed by the court. (As directed by Statute, R. 12, 13.)

Notice in the form required by the court's order was posted and published, as directed by the court.

Hearing was held at the time and place fixed for hearing, and proclamation was made to all persons having an interest in the subject matter of the proceeding to appear and be heard. No claim was made at the hearing.

After hearing, the court held that the obligations arising from the receipt by the appellant in Pennsylvania of moneys for the money orders constitute property subject to escheat to the Commonwealth, and that the proceedings complied with the requirements of the due process clause of the Fourteenth Amendment to the Constitution of the United States. The court accordingly entered a judgment that the said property had escheated to the Commonwealth.

## SUMMARY OF ARGUMENT

## I.

Under Pennsylvania's Escheat Statute, the obligations of the appellant in this case were subject to escheat to the Commonwealth. The Commonwealth was justified in exercising its ~~power~~ of escheat because it had sufficient contacts with the transactions giving rise to such obligations. The appellant maintained places of business in Pennsylvania for its money order business; it supplied applications for money orders to be filled out at its offices in Pennsylvania by those wishing to avail themselves of its money order service; the monies to be transmitted for such persons was received by the appellant in its offices in Pennsylvania, and it there delivered receipts for the monies so deposited with it; in the conduct of its business in Pennsylvania, the appellant received the benefit and protection of the laws of the Commonwealth of Pennsylvania, including the right to plead the Pennsylvania Statute of Limitations.

The appellant was amenable to process in Pennsylvania at the time of the institution of the escheat action, and was served with process in Pennsylvania in the within action; it filed an answer in the said action to the petition in escheat.

Since the Commonwealth of Pennsylvania had sufficient contacts to justify the escheat of the said obligations, it is immaterial that the appellant is a corporation of the State of New York, and that the domicile



of the owners is unknown. The state of incorporation does not have a superior right of escheat, depriving the Commonwealth of Pennsylvania of the right to escheat obligations as to which the "sufficient contacts" existed. The State of New York itself, by its legislature, by its courts and by its Attorney General, supports the principle that where there are "sufficient contacts", the obligations of a foreign corporation which has been served with process may be escheated.

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## II.

The proceedings in the present case complied with due process. The judgment in escheat was rendered after hearing, notice of which was afforded to all persons who might claim an interest in the property sought to be escheated. The statute itself is notice to all parties in interest; the seizure of the res by the service of process upon the appellant, whose obligations to the owners constitute the res sought to be escheated, constitutes notice; the notice afforded by the statute and the seizure of the res was supplemented by posting and publication in the newspapers, in accordance with the principles laid down in *Standard Oil Company vs. New Jersey*, 341 U.S. 428, *Mullane vs. Central Hanover Bank & Trust Co.*, 339 U.S. 306, and other cases.

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## III.

The Full Faith and Credit Clause of Article IV, Sec. 1 of the Constitution of the United States pro-

fects the appellant from any further liability as to the obligations declared escheated, and the judgment in escheat may be pleaded in any action which may be instituted against the appellant either by another state, on the ground of escheat, or by the former owners.

ARGUMENT

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1. Were the contacts of the Commonwealth of Pennsylvania with the transactions in this case sufficient to support the judgment of escheat to the Commonwealth of the obligations arising from such transactions?

---

The Commonwealth has sufficient contacts with the transactions giving rise to such obligations to support and justify its power to escheat such obligations. As said in this case in the opinion of the Supreme Court of Pennsylvania:

"All of the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania." (R. 93)

The opinion then quoted *Connecticut Mutual Life Ins. Co. vs. Moore*, 297 N.Y. 1, 9, which said:

"The core of the debtor obligations of the plaintiff companies was created through acts done in this state, under the protection of its laws, and the ties thereby established between the companies and the state were without more sufficient to validate the jurisdiction here asserted by the legislature."

This decision was affirmed in *Connecticut Mutual Life Ins. Co. vs. Moore*, 333 U.S. 541, where the Court

stated that the question was whether the State of New York had sufficient contacts with the transactions giving rise to the obligations. After reviewing the facts, the court said (551):

“Certainly the relationship between New York and foreign insurance companies as to policies here under discussion is as close as that between the company and the state of incorporation.”

The court then quoted the statement of the New York Court of Appeals that the core of the debtor obligations was created through acts done in New York, and that the ties thereby created were without more sufficient to validate the jurisdiction asserted by New York.

In the instant case, the core of the debtor obligations was created through acts done in Pennsylvania, and the relationship as to such obligations between Pennsylvania and the appellant is at least as close as that between the appellant and New York.

The concept of contacts as a justification for the exercise of a sovereign power is not limited to the exercise of the escheat power. In *International Shoe Co. vs. Washington*, 326 U.S. 310, 320, the Court said:

“The activities carried on on behalf of the appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which the appellant received the benefits and protection of the laws of the State, including the right to resort to the courts for the enforcement of its rights. The obligation which

is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there."

As in the *International Shoe Co.* case, so here, the operation of the appellant's money order service in Pennsylvania was neither irregular nor casual. It was systematic and continuous throughout the years, and resulted in a large volume of business, in the course of which appellant received the benefits and protection of the laws of Pennsylvania, including the right to resort to its courts for the enforcement of appellant's rights. Among these benefits to which the appellant resorted was the Pennsylvania Statute of Limitations (Appellant's Answer, par. 15(2), R. 7, 8). The appellant subsequently abandoned the plea of the Statute of Limitations.

The contacts of Pennsylvania with the transactions in this case began when the sender signed an application for a money order at an office of appellant in Pennsylvania. The appellant there received the money to be transferred, and there gave a receipt to the sender. The obligation itself was incurred in Pennsylvania. The trial court held that these were extensive contacts sufficient to support the escheat of the obligations, and the Supreme Court of Pennsylvania affirmed this holding.

Whether or not the Commonwealth of Pennsylvania had sufficient contacts to support the exercise of its

right of escheat was a question of fact which the Court below determined, and such finding of fact is not reviewable. But if it were reviewable, the conclusion of the Court below is amply supported by the evidence.

The appellant seeks to disregard the contacts which the Court below held to be sufficient, and declares that some special contact or contacts are required before a state can have a right to escheat. Appellant does not, except by indirection, state what special contacts are required. It declares only that if any state has the power to escheat the moneys here involved, it is New York, the state of domicile of the appellant, "the only party to the transactions involved whose domicile is in evidence"; that the moneys received by the appellant in Pennsylvania were commingled with other funds and sent out of Pennsylvania, eventually coming to rest in New York.

Similar arguments were made by the foreign corporations in *Connecticut Mutual Life Ins. Co. vs. Moore*, 333 U.S. 541, and were rejected by this Court, which said (548, 549):

"Appellants urge that the following considerations should be determinative in choosing the state of incorporation as the state for conservation of abandoned indebtedness, if such moneys are to be taken from the possession of the corporations. It is pointed out that the present residence of missing policyholders is unknown; that with our shifting population, residence is a changeable factor; that as the insured chose a foreign corporation as his insurer, his choice should be respected, that moneys should escheat to the sovereign that guards them at the time of abandonment. As a practical

matter, it is urged that restricting escheat or conservancy to the state of incorporation avoids conflicts of jurisdiction between states as to the location of abandoned property and simplifies the corporations' reports by limiting them to one state with one law. Attention is called to presently enacted statutes in Pennsylvania, New Jersey and Massachusetts. None of these statutes apply to corporations chartered outside of the respective states. Furthermore, it is argued that the analogous bank cases have upheld escheat or conservancy by the state of the bank's incorporation. Finally, reliance is placed on the undisputed fact that the policies are payable at the out-of-state main office of the corporation, and that there claims must be made and other transactions carried on.

"These are reasons which have no doubt been weighed in legislative consideration. We are here dealing with a matter of constitutional power."

The State of New York, in whose behalf the appellant urges the exclusive power of escheat because it is the appellant's state of domicile, has itself taken the contrary position. New York, by its courts and by its Attorney General, has affirmed its right to exercise control over the transactions of foreign corporations in that state, not only in the case of *Connecticut Mutual Life Ins. Co. vs. Moore*, 297 N.Y. 1, supra, but in earlier cases as well.

In *Matter of People (Norske Lloyd Ins. Co.)*, 242 N.Y. 158, 159 (1926), the Court said:

"We think that the legislature, in allowing those foreign corporations to do business in this state



and country, intended to treat the domestic agency as a complete and separate agency, to place it on a parity with domestic corporations, to supervise and regulate it as such."

*Followed in Moscow Fire Ins. Co. vs. Bank of New York*, 280 N.Y. 286, 309 (1939).

This theory was urged by the Attorney General of New York in the case of *Connecticut Mutual Life Ins. Co. vs. Moore*, 297 N.Y. 1, *supra*, in which he asserted, at page 7:

"The domestic agencies of the foreign corporations are in the eyes of the law complete and separate organizations which are to be treated as domestic corporations."

These fictions resorted to by New York's highest court and by its Attorney General are not necessary, in the light of the determination by this Court that it is a state's contacts with a transaction that justify and support the exercise of its sovereign powers over the obligations arising from such transactions. Since the Commonwealth has sufficient contacts with the transactions out of which the obligations in the present case arose, and the property is within the control of the state, it may be escheated to the state.

As said in *Standard Oil Co. vs. New Jersey*, 341 U.S. 428, 345:

"As a broad principle of jurisprudence, rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons."

Pennsylvania has exercised its legislative power in the Act of May 2, 1889, P. L. 66, Sec. 3, as amended by the Act of July 29, 1953, P. L. 986, Sec. 1 (27 P. S. 333), which provides as follows:

“(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth, or the whereabouts of such owner, beneficial owner or person entitled, has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.

“(c) Whenever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth.”

The Commonwealth of Pennsylvania has control of the obligations in this case because it can seize the obligations. It can seize the obligations because the appellant is subject to the jurisdiction of the courts of the state, and the service of process on the appellant effects such seizure.

In *Blackstone vs. Miller*, 188 U. S. 189, 206, the Court said:

“Power over the person of the debtor confers jurisdiction.”

In *Security Savings Bank vs. California*, 263 U. S. 282, 287, the Court said:

“Seizure of the deposit is effected by the personal service upon the bank. Thereby the res is subjected to the jurisdiction of the Court.”

In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, the Court said:

“No matter where the appellant’s assets may be, since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation . . .”

The fact that the identity and address of the owner of the obligation is unknown does not deprive the Commonwealth of its power of escheat. As said in *U. S. vs. Klein*, 106 F. 2d 213:

“Obviously an escheat proceeding may not be defeated merely because the unknown owners can not be located.”

Certiorari denied, 308 U. S. 616.

In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, *supra*, the Court pointed out that in *Security Savings Bank vs. California*, 263 U. S. 282, escheat was allowed as to unknown persons with possible claims to the escheated property, saying:

“As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, *belonging to unknown persons.*” (Italics ours.)

The appellant seeks to overcome the effect of the Pennsylvania contacts with the money order transactions by asserting that the appellant's obligations were transformed into an obligation to pay at a bank outside Pennsylvania, by the issuance of drafts on banks outside Pennsylvania.

The Supreme Court of Pennsylvania held that the mere issuance of drafts did not constitute payment of the money orders, since there was no agreement between the parties to that effect (R. 92).

Neither the findings of fact nor the court's determination of the state law involves any federal question.

The appellant therefore seeks to create a federal question by asserting that the money order tariff regulations under which the appellant operates provide that payments are to be made by drafts, and that such regulations are an essential part of the contract.

However, there is nothing in the tariff regulations to require this conclusion. The money transfer and money order applications, the receipts given by appellant to senders of money, the notices to the designated payees, and the refund notices to the senders, all prepared by appellant, supposedly in accordance with appellant's money order tariff regulations, contain no wording to show that payment would be made other than in money, or that, if a draft were delivered by the appellant for the amount of the money order, such draft would constitute payment of the money order although the draft itself was not paid.

The application directs the appellant to pay so many dollars (R. 68, 75). In the later application, it is stated: "Message to be delivered with the money".

The typical receipts which the appellant gave the senders state that the appellant received from the sender "One Hundred Dollars to be paid to John Smith" (R. 70, 76).

The notice to the payee declares, "We have received a sum of money by telegraph for you. . . . Will you please call at our office . . . to receive the money as soon as possible." (R. 71, 78)

The Notice to Sender of Undelivered Money Order (R. 83) states: "The money deposited by you . . . for transmission by telegraph remains unpaid for reasons beyond our control. If you will call at our office . . . it will be refunded upon presentation of satisfactory evidence of identity". Another form of refund notice (R. 84) reads: "Your money order . . . cannot be paid for the following reason . . . : The money will be refunded to you at the expiration of 72 hours unless payment is effected in the meantime".

In none of these is there any language from which may be drawn an agreement that payment may be made only by draft. It is equally manifest that there is no language from which may be drawn an agreement that if payment is made by draft, such draft shall constitute payment of the money order or of the refund.

Appellant asserts: "That the appellant, as debtor, and the sender or payee, as creditor, contracted that the delivery of a negotiable draft constituted pay-

ment, is established by the provisions of the money order tariff regulations under which Western Union operates." (Appellant's Brief, 14) However, the very language of the tariff regulations negatives the appellant's statement. An excerpt from appellant's Book of Rules states: "While the telegraph company's obligation is to pay money orders in cash, cash payments must necessarily be confined to those made over the counter. However, money order drafts may be delivered in all instances where they will tend to make the service more attractive and when the circumstances are such that delivery of drafts can safely be made." (R. 62, Exhibit D-6)

Another excerpt from the appellant's tariff regulations states: "Payment of Money Orders: Payment of money orders at the Telegraph Company's paying offices is accomplished by delivering a money order draft by messenger to payees who are known to the local office, or by notifying payees to call at the telegraph office, bringing suitable evidence of their identity, to receive the money. Payees of orders payable through banks or agencies are notified by telephone, messenger or mail to call for the money." (R. 64, Exhibit D-7)

The use of drafts by the appellant was obviously for its own purposes and convenience, and at such times as it chose to use them. Such use of drafts was a unilateral act on the part of the appellant, and affords no basis for finding that a bilateral agreement was entered into that drafts were to be issued in payment and that, if drafts were issued, they were to constitute payment even if the drafts themselves were not paid.

Even if this Court were to review the determination of the court below, the evidence in the case establishes clearly that there was no such agreement, and therefore, under the applicable Pennsylvania law, the issuance of the drafts did not discharge the obligations which arose from the money order transactions.

See also *State of New Jersey vs. U. S. Steel Corp.*, 12 N. J. 38, 45, in which the Court said:

"The common law rule is that a check or promissory note, either of the debtor or of a third person, received for a debt, is not payment if not itself paid, except in cases where it is positively agreed to be received in payment."

The appellant asserts that the moneys received by the appellant in Pennsylvania for money orders were transferred out of Pennsylvania, and that the Commonwealth of Pennsylvania has no power to escheat the moneys which were no longer in Pennsylvania. The Supreme Court of Pennsylvania made it clear that the res was not the specific moneys received by the appellant for the money orders, but the obligations which arose out of the money order transactions. As Mr. Justice Musmanno said:

"The Commonwealth here, in its Petition for Escheat, was not calling upon Western Union to search out the original coins and currency deposited by the senders. . . . The Commonwealth asked for the fiscal equivalent of that money.

"Western Union itself does not think of money in a specific sense. When a customer wishes to transmit a monetary sum by telegraph, he fills out a Western Union form which includes such desig-



nations as 'money transfers' and 'message to be delivered with the money'. No one assumes that by the phrase 'money transfer', Western Union is expected to actually transport to the payee the coins and currency the customer places on the counter and for which he is handed a receipt." (R. 91)

The fact that appellant has money in New York to pay the amounts of its money orders issued in Pennsylvania is immaterial. In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, the appellant pointed out that dividend claims were paid from bank accounts maintained outside New Jersey. This Court, in a footnote, stated: "As we think these practices are not significant in determining appellant's liability for these, they will not be further discussed".

This Court also said in the same case (at page 439):

"No matter where appellant's assets may be, since it is its obligation to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation."

2. Did the Pennsylvania escheat statute and the proceedings herein in the court below under the said statute comply with the due process clause of the Fourteenth Amendment to the Constitution of the United States?

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The appellant argues that the notice in this case did not satisfy the requirements of due process.

It commences by stating that notice other than by personal service can be justified only where there has been seizure or attachment of the res, and that seizure or attachment is lacking here.

The appellant confuses the question as to whether there was a seizure of the res with the ultimate question which must be determined by the Court, that is, whether the property seized has escheated. There can be no doubt that the res was seized in this case.

As stated in *Security Savings Bank vs. California*, 263 U. S. 282:

“The fact that the claim of the state to the deposit may be defeated by the appearance of the debtor or other claimant does not prove that the claim was not seized.”

In *Blackstone vs. Miller*, 188 U. S. 189, 206, the Court said:

“Power over the person of the debtor confers jurisdiction.”

In *Security Savings Bank vs. California*, 263 U. S. 282, 287, the Court declared:

“Seizure of the deposit is effected by the personal service on the bank.”

In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, 438, the Court pointed out that the appellant company there was amenable to process at its registered office, and said:

“This gave New Jersey power to seize the res involved here, to wit, the ‘debts or obligations due to the escheated estate’. And the fact that this is immediate escheat is not significant . . .

(439) “No matter where the appellant’s assets may be, since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation . . . The power to seize the debt by jurisdiction over the debtor provides not only the basis for notice to the absent owner but also for taking over the debt from the debtor.”

In the instant case, the res consisted of the obligation of the appellant to refund or pay to the senders of money orders the amounts received by the appellant from them. These obligations were seized by personal service on the appellant, which was amenable to such service in Pennsylvania.

To show that the res was not seized, despite service of process upon the appellant in Pennsylvania, the appellant urges that both the petition in escheat and the notice describe moneys which were not in Pennsylvania, and could not have been seized in Pennsylvania, and that therefore there was no seizure of a res in Pennsylvania.

The appellant says these moneys could not be seized in Pennsylvania because, before the Commonwealth instituted its action in escheat, appellant had mingled the moneys with its other funds in Pennsylvania, that it had used a portion of the mingled funds to meet various operating requirements in Pennsylvania, and that any excess of such funds above these operating expenses had been transferred to appellant's accounts in banks outside Pennsylvania (Appellant's Brief, pages 7, 12).

As said by Mr. Justice Musmanno (R. 91, Opinion of Court):

"This argument almost approaches a play on semantics. It would be difficult to find a more generic term than *money* . . .

"The interpretation argued for by Western Union contradicts what the courts have often declared on this subject. The Supreme Court of the United States said in *Connecticut Mutual Life Ins. Co. vs. Moore*, 333 U. S. 541:

"The statutory reference to any moneys 'held or owing' does not refer to any specific assets of an insurance company, but simply to the obligation of the companies to pay it'".

As Mr. Justice Musmanno pointed out, the appellant itself did not use the term "money" in a specific sense. When it engaged in and carried on the money transfer business, it did not undertake to transport to the payees named in the money orders the specific moneys received by it from the senders. To the contrary, the appellant itself points out that the moneys when received from senders were intermingled with other funds of appellant and were used for its various op-

erating requirements (Appellant's Brief, page 7). Having intermingled with its own funds the moneys received from senders of money orders, appellant could not possibly have transmitted or delivered the specific moneys to the persons named by the senders. Nevertheless, appellant throughout used the term "money transfer", and where there was a message, the money order said there was a "message to be delivered with the money". Manifestly it meant only that the appellant obligated itself to pay an amount equivalent to what it received, that is, in the words of Mr. Justice Musmanno "the fiscal equivalent of that money" (R. 91, Opinion of the Court). The appellant never deposited the specific moneys in its bank accounts. It deposited only the "fiscal equivalent" thereof in its bank accounts.

The appellant next asserts that the res in the present case consisted of drafts given by appellant in payment of its money orders, or in payment of refunds to the senders, that the drafts were payable outside Pennsylvania, and that there was nothing to be seized in Pennsylvania. Again the appellant disregards the determination of the court below that when the appellant, in Pennsylvania, received moneys from a sender of a money order, and agreed that if payment of the money order could not be effected, it would refund to the sender the amount received from him, an obligation on the part of the appellant to refund the moneys to the sender was created in Pennsylvania, and that this obligation was not satisfied or extinguished by issuance of a draft which was itself not paid.

The res, the obligations created in Pennsylvania upon the receipt by appellant of moneys for trans-

mission by its money order service, to refund the amounts so received to the senders if the transmission could not be effected, was seized by the personal service on the appellant in Pennsylvania.

The escheat notice fully described the property, as follows (Record page 12, fifth paragraph):

"The property sought to be escheated consists of amounts held and owing by The Western Union Telegraph Company, the defendant above-named, arising from the receipt by it of various sums from divers persons for transmittal to other persons by the use of the defendant's money orders, and refundable to the senders because the defendant could not effect payment to the senders."

It is manifest that the language in the notice properly identified the property sought to be escheated. As said in *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, 433:

"It (the notice) described the property in accordance with the state court's understanding of the requirements of N. J. Rev. Stat. 2:53-21, and clearly indicated that the petition was one for escheat . . . Here, it is the statute itself, as interpreted by the state court, which requires what we think is adequate notice."

In the present case, the Supreme Court of Pennsylvania held that the notice was adequate.

The appellant seeks to impose upon the Commonwealth rigorous and extreme rules as to notice on the ground that due process so requires. The cases hold otherwise.

In *Owenby vs. Morgan*, 256 U. S. 96, 110, 111, the Court said:

"The due process clause does not impose upon the states the duty to establish ideal systems for the administration of justice, with every modern improvement and with provisions against every hardship that may befall. It restrains state action, whether legislative, executive or judicial, within bounds that are consistent with the fundamentals of individual liberty and private property, including the right to be heard where liberty or property is at stake in judicial proceedings. But a property owner who absents himself from the territorial jurisdiction of a state, leaving his property within it, must be deemed ex necessitate to consent that the state may subject such property to judicial process to answer demands made against him in his absence, according to any practicable method that may be reasonably adopted . . .

"Its (the 14th Amendment's) function is negative, not affirmative, and it carries no mandate for particular measures of reform."

In *Anderson National Bank vs. Lockett*, 321 U. S. 233, 246, in an action of escheat, the Court said:

"What is due process in a procedure affecting property interests must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case."



In *Mullane vs. Central Hanover Bank & Trust Co.*, 339 U.S. 306, the Court recognized the vital interest of the state in determining the interests of persons unknown, saying:

“A construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified.”

Taking into account the purpose of the procedure in this case, and the fact that no personal judgment against the unknown owners was sought or rendered, there was in this case no lack of due process.

The escheat statute itself is a form of notice. As said in *Anderson National Bank vs. Luckett*, 321 U. S. 233, 243, 88 L-Ed. 692:

“The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be presumptively abandoned and their surrender to the state compelled. All persons having property within a state and subject to its dominion, must take note of the statutes affecting the control or disposition of such property, and the procedure they set up for those purposes.”

Seizure of the res is itself notice. As said by the lower court in *Hollingsworth vs. Barbour*, 29 U. S. 466, 475, affirmed by the Supreme Court:

“The law regards the seizure of the thing as constructive notice to the whole world, and all persons concerned in interest are considered as affected by this constructive notice.”

The principle was reaffirmed in *Anderson National Bank vs. Luckett*, supra, at page 245. The court there said:

“In all such proceedings the seizure itself is itself a form of notice of the claim asserted, to those who may claim an interest in the property. See *Corn Exchange Bank vs. Coles*, 280 U.S. 218, holding constitutional a statute providing for no notice to the owner of a bank deposit other than its seizure.”

What is seizure of a debt or other obligation is explained in *Security Savings Bank vs. California*, supra, which stated:

“Seizure of the res is effected by the personal service upon the bank.”

Cited with approval in *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, 439, which said:

“Since it is its obligation to pay to the escheated estate that is taken, personal service on appellant effects a seizure of that obligation . . . That power to seize the debt by jurisdiction over the debtor provides (not only) the basis for notice to the absent owner.”

In the present case, personal service was made upon the Appellant, and effected a seizure of the obligations.

The appellant states that there was a lack of due process because no notice was given by mail to possible claimants whose last known addresses were available. It states that “the three cent expenditure for a post card is certainly not too great”.

It must be remembered that if the names and addresses were available, they were available to the appellant for at least seven years before the escheat action was instituted, and if a three cent post card would have reached the interested parties, the appellant could have sent the post card before the escheat action was commenced. In appellant's own words, "the three cent expenditure for a post card is certainly not too great". (Parenthetically, it may be noted that during the period prior to the escheat action, the appellant could have sent a post card for two cents or perhaps even for one cent.)

It is possible that if the appellant had mailed such a post card during the seven year period before the escheat action was instituted, payment might have been effected. Instead, the appellant chose not to do so, but preferred instead to allow a period of six years to pass, so that, as set forth below, it might assert the plea of the Statute of Limitations and claim title for itself.

The record shows that when the escheat action was instituted, it would have been fruitless for the Commonwealth to have mailed post cards to the addresses supplied by the appellant.

In the appellant's answer to the petition in escheat, it made it clear that though it had addresses of senders and payees at one time, the whereabouts of such persons were unknown when the escheat petition was filed. In paragraph 13 of its Answer (R. 6), the appellant pleaded as follows:

"It is averred that in each instance in which the defendant at its offices and places of business

in Pennsylvania received moneys from a person desiring to send a money order and did not effect payment or repayment as set forth in paragraph 11 hereof for more than seven years after the sender was first entitled to repayment, the whereabouts of the sender have been unknown for more than seven years . . .”.

To the same effect is paragraph 14 of appellant's Answer (R. 7), except that in the latter paragraph, the appellant claimed the benefit of the Statute of Limitations. In paragraph 15 of the Answer (R. 7), the appellant claimed title to unpaid moneys, adversely to the unknown claimants and the Commonwealth. The appellant subsequently abandoned both the plea of the Statute of Limitations and its claim of title.

In *American Land Co. vs. Zeiss*, 219 U. S. 47, 67, it is stated that the criterion of due process is the just and reasonable character of the requirements, having reference to the subject with which the statute deals.

In the present case, it would not be just or reasonable to require the Commonwealth to go through the fruitless task of mailing post cards to persons whose whereabouts are unknown.

The appellant asserts that there was a lack of due process because in the published and posted notice of the proceedings, the names of the possible claimants were not set forth. A reference to the example of a list of the items shows that all but one were \$15.00 or less, several being as low as \$1.00 or \$2.00, and the average being less than \$10.00 (R. 59, 60).

The Escheat Statute, Act of May 2, 1889, P. L. 66, Sec. 8, 27 P.S. 43, provides as follows:

"The court shall have full power, at any stage of the proceedings, when they think it wise so to do, to make such orders relative to advertisements and notices of the proceedings as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof."

The published and posted notice complied with the order of the Court, entered in accordance with the statute, as construed by the Court. In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, a similar escheat statute was attacked by the appellant there. This court sustained the New Jersey statute.

The fact that the notice did not contain the names of the owners whose whereabouts were unknown did not constitute a lack of due process. In *Mullane vs. Central Hanover B. & T. Co.*, 339 U. S. 306, in a proceeding for a judicial settlement of trusts, notice was given by publication to all parties interested in the trust, *without naming them*.

The Court held that the proceeding did not violate due process, saying:

(311) "We understand that every right which beneficiaries would otherwise have against the trust company, either as trustee of the common fund or as trustee of any individual trust, for improper management of the common trust fund during the period covered by the accounting is sealed and wholly terminated by the decree . . .

(313) "The vital interest of the state in bringing any issues as to its fiduciaries to a final settle-

ment can be served only if interests or claims of individuals who are outside of the state can somehow be determined. A construction of the due process clause which would place impossible or impractical obstacles in the way could not be justified . . .

(317) "Thus it has been recognized that in the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights . . .

"We recognize the practical difficulties and costs that would be attendant on frequent investigations into the status of great numbers of beneficiaries, many of whose interests in the common fund are so remote as to be ephemeral; and we have no doubt that such impracticable and extended searches are not required in the name of due process. The expense of keeping informed from day to day of substitutions among even current income beneficiaries and presumptive remaindermen, to say nothing of the far greater number of contingent beneficiaries, would impose a severe burden on the plan, and would likely dissipate its advantages. These are practical matters in which we should be reluctant to disturb the judgment of the state authorities.

"Accordingly we overrule appellant's constitutional objections to published notice insofar as they are urged on behalf of any beneficiaries whose interests or addresses are unknown to the trustee."

The escheat notice is directed to all persons claiming an interest in the property sought to be escheated. The appellant declares that the notice is defective in that the holders of drafts would not know the notice applied to them, since the property sought to be escheated is described in the notice as moneys held and owing by the appellant arising from the receipt by it of various sums from divers persons and refundable to the senders thereof because the appellant could not effect payment to the sendees (Form of notice, R. 12).

This supposition is without basis. Each draft states on its face that it is for the "Amount deposited for transfer" (R. 66, 67, 68).

The appellant refers to the drafts as negotiable drafts, presumably in order that it may be inferred that the holders of the drafts may be holders for value, and that in any action brought by such holders for value after the judgment of escheat, such holders for value would not be subject to the plea of the judgment of escheat.

However, as pointed out by the court below, these drafts would be staledated and therefore not honored (Opinion of the Court, R. 94). The drafts were issued at least seven years before the institution of the escheat action on December 21, 1953, and at least thirteen years before the entry of the final decree in escheat (R. 56). The appellant itself showed that it would not honor the drafts because they were staledated. In its answer to the petition in escheat, the appellant pleaded the Statute of Limitations and averred that the appellant "therefore, is now the rightful and lawful owner of any personal property con-



cerning which the petition . . . asks the Court to decree an escheat." (Appellant's Answer, par. 15(2), R. 7, 8)

Furthermore, as set forth in appellant's Answer, paragraphs 10 and 11, none of the drafts were ever presented to the appellant for acceptance (R. 6).

The appellant seeks to place impractical obstacles in the way of the Commonwealth, so that it may be deterred thereby from exercising its right of escheat, thereby leaving to the appellant, without any right except that under the benefit of the Commonwealth's Statute of Limitations, the benefit of this unclaimed property. The Due Process Clause of the Fourteenth Amendment to the Constitution of the United States was not intended for such a result.

### 3. Does the judgment in escheat herein come within the Full Faith and Credit Clause?

The answer is in the affirmative. Article IV, Sec. 1 of the Federal Constitution provides:

“Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.”

The Act of Congress approved May 26, 1790, c. 11, 28 U.S.C. 687, provides for the authentication of the judicial proceedings of the courts of a state, and declares:

“Judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they were taken.”

Under the Full Faith and Credit Clause and the Act of Congress, the plea of the judgment in escheat in the Pennsylvania court will be a valid defense in any later action against the appellant in any other court as to the same property, that is, the debts or obligations escheated, whether such later action be by the former owners of such property, or by another state seeking to obtain possession of the same property.

In *Isaacs v. Hobbs*, 282 U. S. 734, 75 L. Ed. 645, the Court followed *Wabash R. R. Co. vs. Adelbert College*, 208 U. S. 38, 54, 52 L. Ed. 379, 386, as follows:

“When a court of competent jurisdiction has, by appropriate proceedings, taken property into

its possession through its officers, the property is thereby withdrawn from the jurisdiction of all other courts. The latter courts, though of concurrent jurisdiction, are without power to render any judgment which invades or disturbs the possession of the property while it is in the custody of the court which has seized it."

The court which has taken property into its possession has the power to determine rights in the property. As said in *Isaacs vs. Hobbs*, supra:

"The court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property."

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The judgment of such court is conclusive. In *Williams vs. Armroyd*, 7 Cranch (11 U. S.) 423, 432, 3 L. Ed. 392, 395, the court said:

"The sentence of a competent court, proceeding in rem, is conclusive with respect to the thing itself, and operates as an absolute change of the property. By such sentence, the right of the former owner is lost, and a complete title is given to the person who claims under the decree. No court of co-ordinate jurisdiction can examine the sentence."

In *Security Savings Bank vs. California*, 263 U. S. 282, 286, 68 L. Ed. 301, the court said:

"If the deposit is turned over to the state, in obedience to a valid law, the obligation of the bank to the depositor is discharged."

In *Anderson National Bank vs. Lockett*, 321 U. S. 233, 242, 88 L. Ed. 693, it was declared:

"Since the bank is a debtor to its depositors, it can interpose no due process or contract clause objection to payment of the claimed deposits to the state, if the state is lawfully entitled to demand payment, for in that case payment of the debt to the state, under the statute, relieves the bank of its liability to the depositors."

In *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, 442, the appellant raised similar questions as to the Full Faith and Credit Clause. The court there said:

"Finally, we shall deal with appellant's objection that this statutory escheat takes its property without due process because it does not protect it from claims by the owners . . . or against escheat or conservation actions by other states against Standard Oil of New Jersey for the same debts or demands . . .

(443) "We have indicated above that we consider the notice to the stockholders adequate to support a valid judgment against their rights as well as those of the company . . . The debts or demands represented by the stock and dividends having been taken from the appellant company by a valid judgment of New Jersey, the same debts or demands against appellant cannot be taken by another state. The Full Faith and Credit Clause bars any such double escheat."

The appellant asserts that it is not protected against further claims because the Pennsylvania escheat statute is not a mere custodial statute. However, as stated in *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, in discussing the power of the State of New Jersey to seize the debts and obligations in that case:

“The fact that this is immediate escheat is not significant.”

To the same effect is *Security Savings Bank vs. California*, 263 U. S. 282, 286, *supra*, in which the court said:

“It is no concern of the banks whether the state receives the money merely as depository, or takes it as an escheat.

“The suit determines the custody (and perhaps the ownership) of the deposit.”

So, too, in *Anderson National Bank vs. Lockett*, 321 U. S. 233, *supra*, the court said:

“All persons having property located within a state and subject to its dominion, must take note of the statutes affecting the control or disposition of such property and of the procedure they set up for those purposes.”

The appellant repeats here its argument that other states may make claims of escheat on various grounds, such as domicile of the persons to whom the money orders were made payable and as to whom payment was not effected, or that the banks on which checks were drawn were located in such other states. The appellant urges most strongly the possibility that New York, appellant's state of incorporation, may make such a claim.

The appellant asserts that if the claim of more than one of these other states were upheld, the appellant would be deprived of its property without due process of law. However, in any such action, the appellant may plead the earlier judgment entered in the Penn-

sylvania court, whereby the property was withdrawn from the jurisdiction of any other court, and title vested in the Commonwealth of Pennsylvania, so that no other court can exercise jurisdiction as to such property. If, upon such plea, such other court should fail to give full faith and credit to the Pennsylvania judgment, the appellant would have the right to appeal to this court or to file a petition for writ of certiorari to compel such full faith and credit to the Pennsylvania judgment.

The appellant states that some states have already laid claim to the funds here in question. That is incorrect. Other states, such as Massachusetts, have made claim to similar moneys, that is, moneys received in Massachusetts for transmittal to other persons. The facts parallel the facts in Pennsylvania, but do not deal with the same funds. Each of these two states deals only with moneys received in that state for money orders purchased in such state.

The appellant states that New York has taken by escheat some of the funds claimed by Pennsylvania, and points to the opinion of the trial court (R. 47). This is incorrect. Nor has Pennsylvania made claim to any moneys taken by New York. To the contrary, Pennsylvania has recognized the fact that once any moneys have been taken by New York, full faith and credit must be given to its action. As said by the trial court:

"Since this has been done, we have no jurisdiction over this sum." (R. 47)

It must be recognized that where transactions of a corporation give rise to debts or obligations, more

than one state may have sufficient contacts to support its jurisdiction over such debts or obligations, that is, that there are various kinds of sufficient contacts supporting such jurisdiction.

One kind of sufficient contacts is that seen in the present case, and in *International Shoe Co. vs. Washington*, 326 U. S. 310, *supra*, where a corporation of one state carries on business activities in another state, where the transactions are conducted in the latter states, where moneys are received in the latter state and the obligations are incurred there and the corporation thereby has received the benefit and protection of the laws of the second state.

Another kind of sufficient contact is that which exists between a corporation and the state of its incorporation, even though the corporation has no assets in the state of incorporation, does no business there, and the obligations are not incurred there, the corporation having merely a registered office in that state, as in *Standard Oil Co. vs. New Jersey*, 341 U. S. 428, *supra*.

A third kind of sufficient contact may exist where the obligee is domiciled in a state other than the state of incorporation and other than in a state where the corporation carries on business and the transaction was entered into. In such case, the sufficient contact is the contact between the state and one domiciled therein.

There may be a variety of kinds of sufficient contacts. It is not necessary that a state have all such kinds of sufficient contacts, or that it have any one particular kind of sufficient contacts. It need not have



one kind of sufficient contacts rather than another. Nor can the fact that a state has sufficient contacts of one kind render nugatory another state's sufficient contacts of another kind.

Whatever the kind of sufficient contacts a state may have, it has the power to deal with debts or obligations related to such sufficient contacts, if the obligation can be seized, that is, if the obligor is amenable to process in that state.

The appellant urges that the state of incorporation should be recognized as having the only kind of sufficient contacts, to support jurisdiction in escheat.

In this case, the state of incorporation is New York. However, as pointed out above, the courts and the Attorney General of that state, in *Connecticut Mutual Life Ins. Co. vs. Moore*, supra, *Matter of People (Norske Lloyd Ins. Co.)*, supra, and *Moscow Life Ins. Co.*, supra, have urged that where a foreign corporation does business in New York, that state has the same power, as to transactions of the corporation in New York, as it would have if the transactions were those of a domestic corporation.

The New York legislature has taken the view that it may deal with unclaimed obligations of foreign corporations. Thus, in *Connecticut Mutual Life Ins. Co. vs. Moore*, supra, the New York Abandoned Property Law, then in effect, dealt with unclaimed moneys held or owing by life insurance companies incorporated in other states, but doing business in New York. Although the New York legislature amended the New York Abandoned Property Law as late as 1960, the provision as to foreign life insurance companies remained unchanged.

It is therefore seen that the State of New York, by its judicial, legislative and executive branches, takes a view that "sufficient contacts" are not limited to that between a corporation and the state of its incorporation, or that all other states should forego the rights arising from their own "sufficient contacts".

And, as in *Connecticut Mutual Life Ins. Co. vs. Moore*, supra, certainly the relationship between Pennsylvania and the appellant is as close as that between New York and the appellant.

The appellant conjures up a specter of a race between the states, and "nibbling attacks" by the states upon the appellant, which says:

"We do not think it necessary to suggest that the claims of those other states might be motivated by something other than solicitude for the interests of the true owners of the property."  
(Appellant's Brief, page 27.)

It may be said with perhaps greater accuracy that the appellant is not motivated by solicitude for the true owners or for the State of New York. As pointed out above, the appellant claimed title to the money here involved, and emphasized its concern for the owners and for the State of New York only after it decided, in its own interest, not to press its claim of title.

The appellee has received a copy of a motion of the Attorney General of New York for leave to appear herein to argue orally on behalf of the State of New York that the right of escheat should be restricted to New York, the state of appellant's domicile. How can the State of New York properly take this position, in

the light of the decision to the contrary in *Connecticut Mutual Life Ins. Co. vs. Moore*, 333 U. S. 541, and in the light of the position to the contrary of the New York legislature, its highest court, and the argument of its Attorney General in the said case?

The New York Abandoned Property Law, in force at the time this escheat action was instituted and at the time the judgment in escheat was entered, provided as follows:

“(This Act) shall not apply to any . . . money which is the subject of any action or legal proceeding commenced by any other state claiming ownership or possession of the same as escheated property, which action or legal proceeding is pending at the time such organization is required by this section to make its report.” (McKinney’s Consolidated Laws of New York, Book 21<sup>2</sup> “Abandoned Property Law”, L. 1949, c. 824 as amended L. 1956, c. 228)

There was, therefore, no conflict between the Commonwealth of Pennsylvania and the State of New York as to the escheated property at the time the within escheat action was ~~instituted~~ and the judgment of escheat entered. The New York Statute was amended, effective March, 1960, L. 1960, c. 307, and the above provision was not included in the amendment. It is to be noted that the amendment was almost seven years after the commencement of the within action in December, 1953, and nearly a year after the entry of judgment in escheat.

The appellant states that fairness to it and among claimant states and individuals demands a fixed, defi-

nite rule which either confines the right to escheat to a single state having clear contacts to the property (such as the domiciliary state), or else forbids any proceeding which does not insure opportunity for superior claims to be successfully asserted as under a custodial statute.

The appellant seeks to have this Court lay down a set of rules codifying the law of escheat, disregarding the decisions heretofore rendered.

It must be remembered that the right of escheat is a sovereign right of the states, to be exercised by their legislatures.

As said in *Standard Oil Company vs. New Jersey*, 341 U. S. 428, 435, 436, *supra*:

"As a broad principle of jurisprudence . . . it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons . . . (As) the disposition of abandoned property is a function of the state . . ."

In *American Loan & Trust Co. vs. Grand Rivers Co.*, C. C. Ky. 1908, 159 F. 775, 780, the Court said:

"Those authorities inevitably lead to the conclusion that the National government is not in any case the *parens patriae* to which ownerless property of any sort in any state of the Union passes. We think that within the states respectively it is the state which exclusively is *parens patriae*."

The same principle was recognized even as to moneys deposited in the registry of a Federal Court, in *U. S. vs. Klein*, 303 U. S. 276.

Except for constitutional limitations, the Federal government has no power to lay down such rules. Whether or not property is within the control of a state within the meaning of the state's escheat statute is a matter for determination by the state courts, subject to review by this Court only in exceptional cases.

The sovereign right of escheat has not been surrendered by the states to the Federal government.

As said in *Commonwealth vs. Reeder*, 171 Pa. 505, 513:

"Whatever the people have not, by their constitution, restrained themselves from doing, they, through their representatives in the legislature, may do. . . . Certain grants of power, very specifically set forth, were made by the states to the United States, . . .; then come the specific restraints imposed by our constitution upon our legislature; . . . but in that wide domain not included in either of these boundaries the right of the people through the legislature to enact such laws as they choose, is absolute."

Followed in *Tranter vs. Allegheny County Authority*, 316 Pa. 65, 75.

In *Wheeler vs. Smith*, 9 How. 55, 78, the Court said:

"When this country achieved its independence, the prerogatives of the crown devolved upon the people of the states. And this power still remains with them, except so far as they have delegated a portion of it to the Federal government. . . . The state, as a sovereign, is the *parens patriae*."

In a footnote to *Standard Oil Company vs. New Jersey*, *supra*, it is stated:

“The right of the King at common law to take possession, in certain circumstances, of abandoned chattels is clear. This doctrine of bona vacantia came to include choses in action . . .”

The appellant seeks to eliminate the principles laid down in the cases that the states have the power to escheat property where it is within their reach and control, and that intangible property is within the ~~reach and control~~ of a state when the holder of such intangible property is amenable to process within the state, and the state has sufficient contacts with the transactions giving rise to such intangibles.

It is submitted that even if it were within the power of this Court to lay down such a set of rules, such a course is not necessary. When questions have arisen in escheat cases, the orderly course of procedure has been followed to determine these questions. It is to be noted that the determination of the highest courts of the various states, from whose decisions in escheated matters appeals have been taken to this Court, have almost invariably been affirmed by this Court.

*Security Savings Bank vs. California*, 263 U. S. 282;

*U. S. vs. Klein*, 303 U. S. 276;

*Anderson National Bank vs. Lockett*, 321 U. S. 233;

*Connecticut Mutual Life Insurance Co. vs. Moore*, 333 U. S. 541;

*Standard Oil Company vs. New Jersey*, 341 U. S. 428.

## CONCLUSION

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The judgment in escheat is valid because it deals with property within the reach and subject to the control of the Commonwealth of Pennsylvania. The res consists of moneys held and owing by the appellant, arising out of transactions in Pennsylvania, under circumstances establishing "sufficient contacts" of Pennsylvania with both the transactions and the res. The res has been seized by Pennsylvania by process served upon the appellant, and the Pennsylvania Court which issued such process had the power to determine the rights to such property.

The judgment in escheat was entered after hearing, upon notice to all parties who might have an interest in the res. The notice was manifold, consisting of the notice inherent in the statute, notice by virtue of seizure of the res, posting and publication.

There is no conflict between the Commonwealth of Pennsylvania and the State of New York as to their respective rights to the escheated property; the New York Abandoned Property Law specifically excepted from its provisions any property which New York might otherwise claim, if such property were the subject of any legal proceeding in any other state claiming ownership of the property as escheated property, at the time such property would be reportable under the New York Statute.



*Argument*

It is submitted that the judgment of escheat should be affirmed.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

No. 15—October Term, 1961

THE WESTERN UNION TELEGRAPH COMPANY,  
*Appellant,*

*against*

COMMONWEALTH OF PENNSYLVANIA, by  
SIDNEY GOTTLIEB, Escheator,  
*Appellee.*

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

## BRIEF OF THE STATE OF NEW YORK, AMICUS CURIAE, FOR REVERSAL

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ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

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**BRIEF OF THE STATE OF NEW YORK,  
AMICUS CURIAE, FOR REVERSAL**

---

**Statement**

This brief is filed by the Attorney General of the State of New York, *amicus curiae*, in support of the position that New York is the State in which are grouped the dominant and essential elements in respect to the obligation of appellant The Western Union Telegraph Company, upon its telegraphic money order transactions, so that it is New York which has the right to take custody, as abandoned property, of unclaimed moneys held by the Company arising out of these transactions.

This appeal involves the contention of the Commonwealth of Pennsylvania, which prevailed below, that it has the right of escheat of moneys received in Western Union offices in Pennsylvania, for transmission of telegraphic messages for delivery of negotiable drafts, wheresoever such messages are directed, wheresoever the drafts are issued and wheresoever any other transaction relative to the drafts subsequent to the application takes place or might take place, though all such subsequent steps be outside Pennsylvania.

### **The Pennsylvania decisions in this case**

The Supreme Court of Pennsylvania, affirming the Court of Common Pleas of Dauphin County, Pennsylvania, upheld Pennsylvania's contention. The basis of the Supreme Court's decision appears to be summed up in the following statement in its opinion (R., p. 93):

"The Western Union Telegraph Company is not domiciled in Pennsylvania, but it is subject to its jurisdiction since it transacts business here in many offices, and personal service was obtained upon it in Pennsylvania. Moreover, all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania."

The opinion of the Supreme Court of Pennsylvania is reported in 400 Pa. 337, 162 A. 2d 617.

The opinions of the Court of Common Pleas of Dauphin County, Pennsylvania are reported in 73 Dauphin County Reports 160, and 74 Dauphin County Reports 49.

### **The Material Facts**

The Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, has its principal office in the City of New York, State of New York (R., p. 13). It is authorized to do business in every State in the United States except Alaska and Hawaii, and in the District of Columbia, as well as in foreign countries (*id.*). It is a matter of common knowledge that there are many thousands of Western Union offices in the several States.

One facet of Western Union's business is the telegraphic money order transaction.

The method of this operation is detailed in the stipulation of facts (R., pp. 17-30), and summarized in the Statement in appellant's brief (Br., pp. 6-7).

From the details of the method of operation, these facts are distilled:

1. The Western Union Telegraph Company, with its principal office in New York State, and not any of its thousands of units, is responsible for the delivery of the money orders, the honoring of the money orders, and when the money orders are undeliverable, the refund of moneys to the senders.

2. The moneys received from senders in Western Union's units, all over the United States, are ultimately remitted to Western Union's principal office in New York State.

3. It is from Western Union's principal office in New York State that its units all over the United States are kept supplied with moneys with which to honor money orders or make refunds to senders.

4. Western Union's units throughout the United States honor money orders or make refunds to senders, irrespective of the unit where the sender applied for the money order and irrespective of the unit where the money order was delivered, or upon which fiscal agent it was drawn.

5. There could be (other than New York, the State in which the elements of Western Union's total obligation on the money orders are grouped) a number of States which the same money order transaction would touch, for example:

a. The state in which the application for the money order was made and the money paid over by the sender [the contact upon which Pennsylvania here relies];

b. The state where the money order was delivered to the payee;

c. The state of residence of the payee;

d. The state of the sender's residence;

e. The state where the fiscal agent on which the money order was drawn is located.

### **Summary of Argument**

The decision on this appeal should be one that will resolve the existing and potential conflict among the States produced by the fact that moneys unclaimed in Western Union money order transactions result from a predominantly multi-state operation.

It is Western Union Telegraph Company, which has its principal office in New York State, that is liable upon

all telegraphic money order transactions no matter in which states various steps in respect to the transaction take place, and not any of its thousands of units. It is from Western Union's principal office in New York State that honoring all its money order transactions is controlled. It is in Western Union's principal office in New York State that the essential elements of Western Union's liability on these obligations are grouped.

The state in which application for money orders is made has a minor contact with every such transaction, and is but one of several states which could have some contact with the same transaction.

New York, as the focal state of obligation, should be held to be the state which has the right to take custody of such unclaimed moneys.

A salutary result of such ruling would be that it would put an end to the chaotic reaching for unclaimed moneys arising out of the same transaction by each of the states which can point to the occurrence of some step of the transaction within its jurisdiction.



## ARGUMENT

### I

**The issue which the facts of this case and circumstances on this appeal present for decision is not whether Pennsylvania has any jurisdiction to exercise the power of escheat for which it contends in this action, but in what state are centered the dominant elements of the obligor's liability on these predominantly interstate transactions, with resulting jurisdiction over unclaimed moneys arising therefrom. The rejection of Pennsylvania's claim is necessary to eliminate confusion and conflict among a number of states contending therefor on the assertion of jurisdiction over some step in the transaction.**

The very reason for being of these money order transactions is that persons, who chance to be in one place, desire to transmit moneys to persons who chance to be distant from them. Therefore, in the nature of these transactions several states are virtually bound to have some "contact" with each and every such transaction.

When the Company's obligation cannot be consummated by payment to the payee or refund to the sender, Western Union holds the unclaimed moneys with which to meet this obligation. And the conflict exists or threatens among the several states, with abandoned property or escheat laws, which have had any contact with these transactions constituted, as these are, of a number of steps.

The issue before the Court is the subduing of this conflict and confusion, by a determination of the state in which the basic aspects of the obligation are centered.

This Court has been aware of the problem inherent in a number of states asserting jurisdiction to escheat the

same unclaimed property. The Court has been aware of the deficiencies in determining the power of escheat by one state in contest with the holder of the unclaimed property, in the absence of any other state which might also assert a right of escheat of the same property (*infra*, *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U. S. 541 [1948]; *Standard Oil Company v. New Jersey*, 341 U. S. 428 [1951]).

In both *Connecticut Mutual Life Ins. Co. v. Moore* and *Standard Oil Co. v. New Jersey* the Opinions of the Court noted the absence of any state asserting jurisdiction of the unclaimed moneys involved, other than the suing state (333 U. S., at p. 548; 341 U. S., at p. 443).

The dissenting opinions in each case objected to the Court's ruling on the claims of the state to the action without the opportunity to hear the claims of other states. (*Connecticut Mutual Life Ins. Co. v. Moore*, *supra*, at pp. 555-556; *Standard Oil Co. v. New Jersey*, *supra*, at pp. 444-445.) The dissenting Justices commented on the seeds of conflict among the states sown by the subject of escheat, and the desirability, even the necessity, of this Court's halting the growth of the crop of litigation that would develop from them. To recall some of these comments—

*Connecticut Mutual Life Ins. Co. v. Moore*, *supra*

at p. 554, Mr. Justice FRANKFURTER:

"\* \* \* a mutilated affirmance of the decision of the New York Court of Appeals, with everything else left open is bound to hatch a brood of future litigation."

at p. 556, Mr. Justice FRANKFURTER:

"\* \* \* the essential problem is the legal adjustment of the conflicting interests of different States, be-

cause each may have some relation to transactions which give rise to funds that undoubtedly are subject to escheat."

at p. 563, Mr. Justice JACKSON:

"While we may evade it for a time, the competition and conflict between states for 'escheats' will force us to some lawyerlike definition of state power of this subject. . . . This competition and conflict between states already require us, in fairness to them, to define the basis on which a state may escheat."

*Standard Oil Co. v. New Jersey, supra*

at p. 444, Mr. Justice FRANKFURTER:

"The Constitution ought not to be placed in an unseemly light by suggesting that the constitutional rights of the several States depend on, and are terminated by, a race of diligence."

The instant case the Court need not decide in "mutilated" form or by according the race to the swift.

On this appeal the Court has before it one State—Pennsylvania—representative of several states which may have "a" contact with the same money order transactions. Also before it is New York State, the state of the location of the principal office of the obligor, where are centered all of the ultimate and essential factors which constitute the responsibility and liability of the Company for the drafts which the public knows as "Western Union money orders".

Every one of the states of the United States which has an abandoned property or escheat law might bring an action similar to Pennsylvania's, for Western Union is authorized to do business in 48 states and in the District of Columbia. In each of these states it receives applications for transmittal of money orders and receives moneys therefor from the senders.

Every state having an abandoned property or escheat law might on the basis of some "contact" with the same money order transaction other than as the place where the application is made, assert a right to unclaimed moneys arising out of the transaction on the basis of some other step in the transaction.

In these United States, in this increasingly mobile era when so very many aspects of people's lives reach out of one state and into other states, when people do not find themselves or deem themselves contained within the borders of a single state, the need is great for a reconciliation of conflicts and confusion which rigid reliance by each state on its jurisdictional or sovereign rights produces.

This Court is the only authority, the single arbiter, which can effect that reconciliation.

This Court's determination that the pre-eminent factors connected with a transaction point to one state as having jurisdiction over unclaimed moneys to the exclusion of other states having lesser contacts therewith, will in the final analysis not cause any state to suffer. For while the facts in one situation would lead to decision in favor of one state, the facts in another situation will deny jurisdiction to it and benefit another state.

In the instant case, dealing with unclaimed moneys arising out of Western Union money order transactions, the elimination of conflict and confusion among the states inevitably arising out of this predominantly interstate operation, requires that the decision be in favor of New York State, where the dominant and essential aspects of the Company's obligation in respect to these transactions are centered (*infra*, Point II).

For this Court to approve the exercise of the power by a state merely because it has some modicum of jurisdiction, such as the Commonwealth of Pennsylvania in this case, would stimulate, encourage and provoke future conflict, not settle it.

In *Connecticut Ins. Co. v. Moore, supra*, and *Standard Oil Co. v. New Jersey, supra*, the Court recognized the propensity for conflict among states arising out of the growing tide of escheat statutes. Escheat statutes and state escheat activity have been burgeoning since these two decisions.

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The opinion of the Supreme Court of Pennsylvania concludes with assurance to Western Union that it need not fear that the moneys involved would be subject to double escheat, because the Pennsylvania decree would be entitled to full faith and credit (R., p. 97). Were this indeed so, there would be a race among the states not only to the Courts, but to the Legislatures for a reduction in the time period in escheat statutes, in order to secure the first escheat judgment or decree—the “unseemly” use of the Constitution to which Justice FRANKFURTER referred (*Standard Oil Co. v. New Jersey, supra*, at p. 444).

## II

**New York is the state in which are centered the dominant elements in respect to Western Union's obligation to honor its money order transactions.**

In the case at bar, the *res* is the obligation of the Western Union to honor its money order transactions. The application for the telegraphic message and the receipt of the

money therefor in one of the Western Union units is but the first step in the operation. The subsequent steps, the issuance of the draft, the payment of the amount of the draft either to the payee or to another who has cashed it, the refund to the sender if delivery cannot be made to the payee, all these in the vast proportion of these transactions do not occur in the state where the application is made.

Thus the call upon Western Union for the moneys involved in the transactions is rarely made in the state where the application for the telegraphic message is made. It might be in any one of a number of states, dependent in each transaction upon what transpires after the telegraphic message is sent. For example, whether the money order is deliverable; if it is, whether the payee cashes it at the office in which it is delivered or carries it away; if he carries it away, where he is resident; if the money order cannot be delivered to the payee, where refund can be made to the sender.

*It follows that the moneys cannot be deemed unclaimed or abandoned in the state where the application for the telegraphic message is made.*

At this point we would observe that the opinion of the Supreme Court of Pennsylvania declared that "all the transactions which are the bases of the respondent's outstanding obligations occurred in Pennsylvania by virtue of the fact that the senders deposited their money in Western Union offices located in Pennsylvania" (R., p. 93). This, as has been shown *passim* in this brief, is just not the fact. The step that occurred in Pennsylvania upon which Pennsylvania founds its claim (R., p. 2; complaint ¶ 5), was merely the filing of the application for the telegraphic message and handing over the money therefor. The send-

ers were not given the money orders. The money orders were to be delivered elsewhere and all other steps "which are the bases of the respondent's outstanding obligation" were to take place elsewhere. Even the refund, if the money order was impossible of delivery, would not necessarily take place in Pennsylvania. So that not "all", but merely one minor step in the transaction occurs where the application is made.

In light of the facts, the issue to be decided is in which state of all the states in which some step may take place, the ultimate obligation is centered.

The state is New York State. To recapitulate, the ultimate obligation is that of the Company and not any of its thousands of offices or units. The units or the banks on which the drafts are drawn are merely the mediums through which the Company may fulfill its obligation. No one of these mediums owes the obligation. The payee, or the sender when the payee has not been located, may turn to any one of the units of Western Union to meet the Company's obligation on these transactions.

The Company's resources to meet all of its money order obligations are at its principal office in New York State. To the principal office in New York State moneys not used for operational needs of the units all over the United States are sent (R., pp. 25-26). From the principal office in New York State moneys are sent to the Company's units wherever a unit runs short of funds needed for its operations. By regulation of the Federal Communications Commission moneys representing money order transactions not claimed within two years are carried on the Company's books as income (R., pp. 25-26).



### **Conclusion**

An orderly and harmonious solution of a situation fraught with potentialities for confusion and conflict among the states, and provocative of multiple litigation stemming from the same transactions, points to this Court ruling in this case in disapproval of the claim of the Commonwealth of Pennsylvania and approval of the right of the State of New York to take custody of unclaimed funds arising out of Western Union Telegraph Company's money order transactions.

**The decision below should be reversed.**

Dated: September 29, 1961.

Respectfully submitted,

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**APPENDIX****Text of Relevant Sections of New York  
Abandoned Property Law****§ 102. *Declaration of policy***

It is hereby declared to be the policy of the state, while protecting the interest of the owners thereof, to utilize escheated lands and unclaimed property for the benefit of all the people of the state, and this chapter shall be liberally construed to accomplish such purpose.

**§ 1309. *Uncashed travelers checks and money orders***

1. Any amount held or owing by any organization other than a banking organization for the payment of a travelers check or money order on which such organization is directly liable, sold by such organization on or after January first, nineteen hundred thirty, which shall have been outstanding for more than fifteen years from the date of its sale, shall be deemed abandoned property.

2. On or before the first day of May in each year commencing with the year nineteen hundred forty-nine every such organization holding or owing such abandoned property shall make a verified written report to the state comptroller of all such abandoned property held or owing by it as of the thirty-first day of December next preceding. Such report shall set forth the amount and identifying number of each travelers check and money order for the payment of which such abandoned property is held or owing.

3. On or before the first day of June in each year commencing with the year nineteen hundred forty-nine every such organization shall pay to the state comptroller all

*Appendix*

abandoned property specified in its report of that year, excepting such abandoned property as shall have ceased to be abandoned since the date as of which such report was prepared. Such payment to the state comptroller shall be accompanied by a statement setting forth such information as the state comptroller may require relative to such abandoned property as shall have ceased to be abandoned.

4. Notwithstanding any other provision of law, the rights of a holder of a travelers check or money order to payment from any such organization shall be in no wise affected, impaired or enlarged by reason of the provisions of this section or by reason of the payment to the state comptroller of abandoned property hereunder, and any such organization which has paid to the state comptroller abandoned property held or owing for the payment of a travelers check or money order shall, upon making payment to the person appearing to its satisfaction to be entitled thereto and upon submitting to the state comptroller proof of such payment and the identifying number of the travelers check or money order so paid, be entitled to claim reimbursement from the state comptroller of the amount so paid, and after audit the state comptroller shall pay the same without the deduction of any service or other charge.

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**IN THE  
Supreme Court of the United States**

**OCTOBER TERM, 1961**

**NO. 15**

**THE WESTERN UNION TELEGRAPH COMPANY,  
Appellant**

**v.**

**COMMONWEALTH OF PENNSYLVANIA, by  
SIDNEY GOTTLIEB, Escheator, Appellee**

**Appeal From the Supreme Court of Pennsylvania**

**REPLY BRIEF FOR APPELLANT**

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## **REPLY BRIEF FOR APPELLANT**

Our principal brief anticipates most of the objections to our argument raised in the appellee's brief. We failed, however, to anticipate certain assumptions which appear to be basic to the appellee's view of the case. Because these assumptions are unjustifiable, comment is called for.

1. Appellee's initial faulty assumption is that this case is concerned solely with obligations to make refunds to senders of money orders. There is a studied attempt in appellee's brief to ignore the fact that the vast majority of money order transactions result in the issuance of negotiable drafts and that 99% of the drafts are in the names of payees rather than senders (R. 29-30). The obligations involved in this case run only in very small part to senders of money orders. Though the notice published as part of the proceedings below referred only to sums "refundable to the senders" (R. 12), the sums sought to be escheated are almost entirely owed to others than senders.

In order to blink this fact, and to cover up the deficiency in the notice given, appellee's counter-statement of the case completely omits all reference to the negotiable drafts which were delivered to payees (in most of the instances here involved) or to senders (in almost all of the remaining instances). This omission, were it not so glaring, would give the case the appearance of being simply analogous to savings bank deposit cases, where the money is put in at one place and is to be paid back to the same person at the same place. Such over-simplification in the case at bar does not simplify, but obfuscates.

A money order transaction is not like a savings bank deposit, but quite the reverse. Its purpose is not to create

*Reply Brief for Appellant.*

an obligation at the place of deposit but to create a new obligation, to the payee, elsewhere. When the payee is found and receives a negotiable draft, as occurred in most instances here involved, the new obligation is created. The sender can then get no refund (R. 27). The situation is then like that raised but not passed on in *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 549-550. The Court in that case held only that a state can escheat moneys due under non-negotiable insurance policies issued within the state under the state's laws and local regulations and payable upon the death of residents of the state to resident beneficiaries. The Court declined to rule on the state's power over interests of out-of-state beneficiaries, or even on policies of insureds who had moved elsewhere. In the case at bar we are concerned not only with rights of persons outside Pennsylvania but also with drafts, payable outside Pennsylvania and fully negotiable.

Perhaps the appellee's studied attempt to ignore the existence of negotiable drafts in this case is more than a mere attempt to domesticate the transactions in Pennsylvania. Perhaps the appellee is indirectly pressing this Court to say that Pennsylvania can declare that no new obligation arises when a payee is located and is given a negotiable draft. Constitutional limitations fortunately prevent the success of any such self-seeking distortion of the general law of negotiable instruments. The negotiable drafts involved in this case represent obligations to pay money at various banks, all of which are outside Pennsylvania. Pennsylvania cannot abrogate rights acquired outside its borders: *Home Insurance Co. v. Dick*, 281 U.S. 397, 410-411. Its attempt to ignore the rights of payees must fail.

*Reply Brief for Appellant.*

2. A second faulty assumption basic to the appellee's argument is the idea that all a state has to do to effect an escheat is to declare that it has "sufficient contacts" with an obligation (whether as a matter of fact or as a matter of law) and get personal service on the obligee. This personal service, says the appellee, constitutes seizure of the obligation, and therefore the "sufficient contacts" are conclusively established. Such circular reasoning is unsound and unjustifiable.

The appellee's bootstrap theory is baldly set forth at page 14 of its brief as follows:

"The Commonwealth of Pennsylvania has control of the obligations in this case because it can seize the obligations. It can seize the obligations because the appellant is subject to the jurisdiction of the courts of the state, and the service of process on the appellant effects such seizure."

This proposition can be put even more baldly: it is no less than an assertion that personal jurisdiction over a debtor, wherever found, is the only prerequisite to escheat of the debt. This is all the appellee means by its repeated references to "sufficient contacts." The result of appellee's reasoning would be the conclusion that all of the forty-eight states where Western Union does business have "sufficient contacts" to escheat the sums Pennsylvania now tries to grab.

This absurd result is reached at least in part through the incorrect view that the contacts needed for personal jurisdiction are identical with those required for the power to escheat. Power to assume personal jurisdiction, under the doctrine of *International Shoe Co. v. Washington*, 326 U.S. 310, is based not just on activity within a



*Reply Brief for Appellant.*

state, but also upon the attendant protection furnished by the state's laws and its courts and upon considerations of fairness with respect to the defendant. The contacts which can justify an escheat by one state in preference to escheat by another must rest upon actual power to seize the *res* escheated and upon considerations of fairness with respect to owners and claimants, including other states, who are entitled to reasonable notice and a reasonable opportunity to be heard. The justification for escheat proceedings is entirely different from that for the assumption of personal jurisdiction, and the threshold of fairness to be surmounted is necessarily higher.

It must never be forgotten that only one state can escheat a given obligation. Whether or not so denominated, every valid escheat proceeding is really *in rem*. Hence the insistence of the cases, cited at pages 19-20 of our brief, on the seizure of a *res* as a prerequisite. Nothing else can protect against a denial of due process or against the usurpation of rights of other states. "Sufficient contacts" for escheat are not the self-declared formalities which the appellee assumes them to be.

3. The appellee's careless approach to the question of adequate contacts leads it naturally to a disregard for adequacy of notice to those concerned in a taking by escheat. For this reason the appellee's argument on the subject of notice proceeds by a path of easy but faulty assumptions.

The initial misstep is, of course, the assumption that personal service is tantamount to seizure of a *res* and therefore to notice. After this *tour de force* the appellee does not hesitate to assert (Brief, p. 27) that "[t]he escheat statute itself is a form of notice." But this over-

looks the fact that in the case at bar, unlike *Anderson National Bank v. Lockett*, 321 U.S. 233, the Pennsylvania statute was not passed until 1953, after the rights accrued, after drafts became payable in states other than Pennsylvania, after the obligations had shifted out of Pennsylvania and the funds to satisfy them had been transferred to the appellant's domicile in New York.

Another faulty assumption on the subject of notice is that Western Union, rather than the escheator, had the duty to send mail notice to possible claimants. Allied to this is the theory that such notice was not mailed before the escheat proceedings began, either because Western Union wanted to wait for the period of limitations to bar the true owners or didn't mail notices because the whereabouts of the true owners could not be discovered.

To all such contentions short and conclusive rebuttal is to be found in the record. Western Union, though it might plead the statute of limitations to protect the rights of those better entitled, does not interpose this defense against true owners: note well the payment of a 1935 draft even while the amount thereof was being claimed by Pennsylvania (R. 31). Neither has Western Union at any time asserted that true owners, though their whereabouts might be presently unknown to it, could not be discovered. A postcard will be forwarded in many instances, giving actual notice to many owners whose whereabouts may be unknown to the sender of the card. The record demonstrates, moreover, that postcards addressed to some possible claimants, such as the Hotels Theresa, Gramercy and Wellington, and the 14th Precinct Magistrates Court, all in New York City (R. 59-60), would be delivered without difficulty or forwarding delay.

*Reply Brief for Appellant.*

The appellee assumes too lightly that the appellant here had the duty to send notices. The appellant stands ready to pay all sums due the true owners. It is the appellee which has evaded its duty to give reasonable notice of its claim to escheat.

4. To the appellee's light assumptions on the subject of notice it adds similarly faulty assumptions as to the protection available for the appellant under the Full Faith and Credit Clause. The fullest faith and credit accorded to a Pennsylvania escheat decree cannot protect the appellant against the claims of persons not bound by that decree because of want of due process. Neither will the Full Faith and Credit Clause avail the appellant in a proceeding in another state whose courts properly conclude that the Pennsylvania decree is ineffective because Pennsylvania was unable to seize the *res* and thus assert escheat power.

A state other than Pennsylvania is not required to accord full faith and credit to a Pennsylvania decree which purports to be directed against assets which are not in Pennsylvania. When Pennsylvania undertakes to escheat sums "refundable to senders" California need not consider itself foreclosed from escheating the sum represented by a negotiable draft drawn on a Los Angeles bank and payable to a resident of California. Nor need New York afford full faith and credit to such a Pennsylvania decree when what New York is claiming is money out of funds held at Western Union's domicile in New York and payable not to a sender but to a payee who is in possession of a draft for the amount.

In *Riley v. New York Trust Co.*, 315 U.S. 343, it was made clear that the decision of a Georgia court that a

*Reply Brief for Appellant.*

decendent was domiciled in Georgia could not bind Delaware with respect to assets of the decedent having a situs in Delaware. The Full Faith and Credit Clause did not prevent the Delaware courts from determining that shares in a Delaware corporation should be awarded to a New York fiduciary which satisfied the Delaware judges that the decedent had been domiciled in New York. By the same token Pennsylvania's assertion that funds, payable or held outside Pennsylvania for persons not afforded a proper notice in the Pennsylvania proceeding, are escheatable in Pennsylvania does not bind the courts of other states. *A fortiori* Pennsylvania's attempt to seize the amounts of negotiable drafts over which it has no control whatever and which were not even mentioned in the Pennsylvania proceeding is ineffectual to bind other states.

In spite of Pennsylvania's taking of the appellant's property here, the appellant still remains liable for corresponding amounts of money elsewhere and has thus been deprived of property without due process of law. Western Union cannot, by pleading that all sums "refundable to senders" have been taken by Pennsylvania, keep other states from escheating the amounts of outstanding negotiable drafts and funds due to the payees. Neither can Western Union interpose the Pennsylvania decree as a defense against claimants who are not bound by personal service and who are claiming money as to which Pennsylvania was unable to assert jurisdiction *in rem*. As against individual claimants Western Union is not required to depart from its practice of waiving the statute of limitations. As against other states Western Union could not raise the defense of the statute. Because the Pennsylvania decree does not bind third parties and

*Reply Brief for Appellant.*

other states, the appellant here properly raises the question of due process as to itself: *Anderson National Bank v. Lockett*, 321 U.S. 233, 242-243. The appellee's assumption to the contrary is ill-founded.

5. The appellee's brief discloses that its whole case is based on the idea that mere naked power over a corporation registered to do business in Pennsylvania is all that is needed to escheat the claims of others, wherever they may be, against the corporation. This is the fundamental flaw in the appellee's reasoning, which finds particular application in all the other faulty assumptions and conclusions on which the appellee relies. The error lies in assuming that "sufficient contacts" can be established simply through jurisdiction *in personam* over a defendant without any control over the property to be escheated.

In line with this view of the law the appellee argues at p. 45 of its brief:

"Whether or not property is within the control of a state within the meaning of the state's escheat statute is a matter for determination by the state courts, subject to review by this Court only in exceptional cases."

The appellee then argues that federal authority cannot be asserted to defeat a State's "sovereign right of escheat." We submit that while this Court sits no state can be permitted to assert such an alleged sovereign right, against the rights of superior claimants and of other states, unless there is also sovereign power over the property to be escheated. Any other conclusion would beg the whole question of sufficiency of contacts and leave the determination of every case solely for the

*Addenda et Corrigenda.*

unilateral decision of a single state. The existence of sufficient contacts is not a question, either of fact or of law, for the unreviewable determination of any state.

We submit that the appellee's brief demonstrates, as well as any argument of ours can show, that Pennsylvania in this case proceeded against the appellant's property regardless of its lack of power over the subject matter, regardless of the rights of claimants to notice comporting with due process, regardless of the rights of states better entitled, regardless of the appellant's rights under the Fourteenth Amendment and regardless of a proper respect for orderly rules regulating the power to escheat within a federal system of government. The Pennsylvania decree should be reversed.

Respectfully submitted,

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*Addenda et Corrigenda.*

Since the filing of the brief for the appellant, an additional state abandoned property law has become effective. To Appendix B of that brief should therefore be added the Florida Disposition of Unclaimed Property Act, 1961 Laws, c. 61-10, Stats. c. 717, effective Septem-

*Addenda et Corrigenda.*

ber 30, 1961. This new enactment requires publication but no posting of notice. With respect to items of \$25 or more it requires that the publication contain names and addresses and that notice be mailed to last known addresses.

Appendix B should be corrected in the following respects: With regard to Massachusetts, the footnote "(2)" should be deleted in the column concerning publication of names and addresses. With regard to New Jersey, the columnar information is correct with respect to the original New Jersey statute; however, under the alternate escheat procedure provided in N. J. Rev. Stat., Title 2A, §§37-29 *et seq.*, publication of names and addresses is required only on items of more than \$50; at the same time, unlike the requirements of the original statute, the alternative procedure does require notices by letter or post card to last known addresses.

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